

# **The Potential Economic Impact of Proposed Changes to Class II Gaming Regulations**

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**Submitted to:**

National Indian Gaming Commission

**Submitted by:**

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## Executive Summary

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In May 2006, the National Indian Gaming Commission (NIGC) proposed changes to the regulation of Class II Indian gaming. These proposed changes, which include amending definitions and game classification standards, are intended to more clearly distinguish Class II gaming from Class III gaming. Generally, the proposed changes are expected to be more restrictive than existing regulations and are likely to limit the types of gaming machines that are currently operated as Class II devices.<sup>1</sup>

I was commissioned by the NIGC to conduct an independent study of the potential economic impact of the proposed Class II regulation changes on the Indian gaming industry. Specifically, I was asked to identify the potential economic impacts and, to the extent possible, quantify them on an aggregate nationwide basis. Due to the confidentiality of tribal financial data, analyses cannot be presented on a tribe-by-tribe or state-by-state basis. For the purposes of this study, I have assumed that the proposed Class II regulation changes will go into effect and that they will be legally enforceable. I have no opinion in these regards.

Given the information considered, I have arrived at the following general conclusions:

- 1) In general, the NIGC's proposed changes to Class II gaming regulations would have a significant negative impact on Class II gaming and the tribes that operate Class II facilities.
- 2) The magnitude of the negative impact would vary widely from state to state and tribe to tribe depending on the legal landscape, political environment, existing market conditions, and the availability of viable alternatives to Class II machines.
- 3) There would be a variety of negative economic impacts on facilities with Class II machines and tribes that operate them:
  - A decrease in gaming revenue;
  - A decrease in non-gaming revenue;
  - A decrease in the variety and quality of Class II gaming machines;
  - Temporary gaming facility closures or partial closures are possible as existing Class II machines are replaced or modified to become compliant with the proposed regulatory changes;

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<sup>1</sup> It is important to recognize that Class II machine gaming is conducted in the context of a gaming system that includes electronic player stations, servers, and operating software.

- Temporary gaming facility closures are possible if compliant Class II machines cannot be developed, certified, and delivered to gaming facilities within the timeframe allotted by the NIGC;
  - A decrease in tribal government revenue as a result of a decrease in transfers of profits from gaming facilities to tribes;
  - An increase in costs, including capital costs, regulatory costs, training costs, revenue-sharing costs, and financing costs; and
  - A decrease in the number of tribal member jobs.
- 4) There are also other broader economic impacts on the Indian gaming industry, including:
- A decrease in leverage that tribes would have in the negotiation/renegotiation of Class III gaming compacts with states;
  - Restriction of new entry into the Class II machine market; and
  - A change in the degree of competition experienced by Class III gaming facilities as Class II machines become less desirable substitutes for Class III games in the eyes of consumers and as more Class III gaming is introduced.

Although all of the aforementioned economic impacts are rooted in economic theory, some are difficult to quantify and/or lack sufficient data for a quantitative analysis. Given these limitations, I have estimated the magnitude of the economic impacts that are readily quantifiable. These impacts are: lost gaming revenue, lost non-gaming revenue; lost tribal government revenue; increased revenue-sharing costs; and lost tribal member jobs.

#### Lost Gaming Revenue

- Tribes with a viable alternative to Class II machines (e.g., Class III machines) would not be likely to suffer losses in gaming revenue. These tribes include all of those with Class II machines in Arizona, Florida, Oklahoma, Oregon, and Wyoming, and most tribes with Class II machines in California.
- Tribes without a viable alternative to Class II machines would have to adopt lower revenue-generating Class II machines that comply with the proposed regulation changes. These tribes include all of those with Class II machines in Alabama, Alaska, Minnesota, Montana, Nebraska, New York, Texas, South Dakota, Washington, and Wisconsin, and the one tribe with a Class II-only facility in California.
- Using MegaMania as a benchmark for the performance of Class II machines under the proposed regulation changes, it is estimated that the average revenue per compliant Class II machine would be 57 percent lower than the actual average

revenue per Class II machine in 2005, the last year for which tribal financial data were available from the NIGC.

- Given a 57 percent decrease in revenue per Class II machine per day, it is estimated that Class II machine revenue would decrease by \$142.7 million.<sup>2</sup>

#### Lost Non-Gaming Revenue

- Given the estimated \$142.7 million decrease in Class II machine revenue, the associated loss of non-gaming revenue is estimated to be \$9.6 million.

#### Lost Tribal Government Revenue

- As a result of the estimated \$142.7 million loss in gaming revenue and \$9.6 million loss in associated non-gaming revenue, tribal government revenue would be reduced by an estimated \$17.4 million.

#### Increased Revenue-Sharing Costs

- Aggregate revenue sharing in Oklahoma would increase between \$49.6 million and \$74.5 million if tribes replace all Class II machines with Class III machines as a result of the proposed regulation changes.

#### Lost Tribal Member Jobs

- As a result of decreased revenues at Indian gaming facilities operating Class II machines, approximately 458 tribal member jobs would be lost.

While alternative scenarios and sensitivity analyses are provided within this report to test how the economic impact varies given various assumptions, it is my opinion that the primary scenario summarized above represents the most likely outcome if the proposed Class II regulation changes are enacted.

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<sup>2</sup> It is the NIGC's view that some Class II gaming machines are "illegal" (i.e., they fail to meet *existing* Class II classification standards and are thus Class III games) and therefore should not be included in the calculation of lost gaming revenue. If "illegal" Class II machines, as identified by the NIGC, are excluded from the analysis, the decrease in Class II machine revenue is \$115.2 million. This scenario was solely developed at the request of the NIGC and does not reflect my opinion.

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# 1. Introduction

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## QUALIFICATIONS

I am a Manager at Analysis Group, Inc., an international economic, financial, and strategy consulting firm. I am an economist specializing in the application of economics to complex business issues, commercial litigation, and regulatory matters. I hold a Ph.D., Master of Arts (M.A.), and Bachelor of Arts (B.A.) in Economics from the University of California, Irvine. One of my areas of expertise is Indian gaming. I have consulted tribal and non-tribal governments on a wide array of economic issues related to Indian gaming. My work has included market analyses, economic impact studies, feasibility studies, surveys, and analyses of gaming compacts and revenue sharing. I have also conducted years of independent, academic research and authored numerous publications on Indian gaming. Most notable has been my annual economic study of Indian gaming, the *Indian Gaming Industry Report*, which is widely cited and relied upon by governments, the gaming industry, and the investment community.

Further background on myself and Analysis Group are set forth in Appendices A and B, respectively.

## ASSIGNMENT

I was commissioned by the National Indian Gaming Commission (NIGC) to conduct an independent study of the potential economic impact of the proposed Class II regulation changes on the Indian gaming industry.<sup>3</sup> Specifically, I was asked to identify the potential economic impacts and, to the extent possible, quantify them on an aggregate nationwide basis. Due to the confidentiality of tribal financial data, I am unable to present analyses on a tribe-by-tribe or state-by-state basis.

For the purposes of this study, I have assumed that the proposed Class II regulation changes will go into effect as set forth in the current Proposed Rules,<sup>4</sup> and that they are legally enforceable. I have no opinion in these regards.

## INFORMATION CONSIDERED

In conducting my assignment, I relied upon my knowledge of economics and Indian gaming. I also relied upon industry data confidentially provided to me by the NIGC. These data included gaming revenue, total casino revenue, transfers to tribal governments, and

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<sup>3</sup> Unless otherwise noted, the opinions set forth herein are those of the author and not necessarily represent those of the NIGC. Furthermore, nothing in this report should be construed as a legal opinion or conclusion.

<sup>4</sup> Proposed Rule, 25 CFR Part 502, Definition for Electronic or Electromechanical Facsimile, *Federal Register* 71 (101), May 25, 2006; Proposed Rule, 25 CFR Part 502 and 546, Classification Standards, Class II Gaming, Bingo, Lotto, et al., *Federal Register* 71 (101), May 25, 2006.

Class II gaming machine counts.<sup>5</sup> Gaming machine count data were supplemented by information from my previously-conducted research and state gaming regulatory agencies.

In addition, input was provided by representatives of tribes, casinos, gaming machine manufacturers, state gaming regulatory officials, and NIGC staff. This input was drawn from recent comments submitted to the NIGC and was supplemented by telephone conversations during the course of my assignment.<sup>6</sup>

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<sup>5</sup> It is important to recognize that Class II machine gaming is conducted in the context of a gaming system that includes electronic player stations, which are referred to in this report as gaming machines, as well as other components such as servers and operating software.

<sup>6</sup> Comments were communicated to the NIGC verbally (at government-to-government consultation meetings) and in writing (letters and statements) (<http://www.nigc.gov/ClassIIGameClassificationStandards/tabid/620/Default.aspx>). Telephone calls were made between August 14, 2006 and November 1, 2006.



## 2. Background

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### INDIAN GAMING

In the United States, gaming is conducted by Indian tribes as an exercise of their inherent sovereign rights as independent nations.<sup>7</sup> And while Indian tribes have operated gaming facilities since the late 1970s/early 1980s, it was not until the passage of the Indian Gaming Regulatory Act (IGRA) in 1988 that larger-scale Indian gaming began to emerge. IGRA is the federal law that established the regulatory framework that currently governs Indian gaming. As set forth in IGRA, gaming serves as a means of “promoting tribal economic development, self-sufficiency, and strong tribal governments.”<sup>8</sup> Toward these ends, tribes may only use gaming profits to:

- 1) Fund tribal government operations or programs;
- 2) Provide for the general welfare of their members;
- 3) Promote tribal economic development;
- 4) Donate to charitable organizations; and
- 5) Help fund operations of local government agencies.<sup>9</sup>

In accordance with the first three uses, tribes have used gaming profits to support a variety of tribal programs and services, such as health care, housing development, schools, youth centers, scholarships, elderly care, child care, vocational training, environmental services, police and fire protection, water and sewer services, transportation, and cultural preservation, as well as to fund the development of other tribal enterprises. Also, some tribes (about 33 percent) distribute per capita payments to tribal members.<sup>10</sup> With regards to the fourth and fifth uses, tribes make donations to charities and revenue sharing payments to state and local governments.

Per IGRA, there are three distinct classes of Indian gaming:<sup>11</sup>

- Class I gaming refers to “social games for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as part of, or in connection with, tribal ceremonies or celebrations.” In terms of regulation, Class I gaming is within the exclusive jurisdiction of tribes.
- Class II gaming refers to “(i) the game of chance commonly known as bingo (whether or not electronic, computer, or other technological aids are used in

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<sup>7</sup> Light, Steven A., Kathryn R.L. Rand, and Alan Meister. 2005. *Spreading the Wealth: Indian Gaming and Revenue Sharing Agreements*. North Dakota Law Review, 80:4.

<sup>8</sup> Indian Gaming Regulatory Act, 25 U.S.C. § 2702.

<sup>9</sup> Indian Gaming Regulatory Act, 25 U.S.C. § 2710.

<sup>10</sup> Per capita payments are distributed to tribal members in 73 of the 224 gaming tribes (National Indian Gaming Association, *Indian Gaming Facts*, accessed October 1, 2006 [<http://www.indiangaming.org/library/indian-gaming-facts/index.shtml>]).

<sup>11</sup> Indian Gaming Regulatory Act, 25 U.S.C § 2703, 2710.

connection therewith) – (I) which is played for prizes, including monetary prizes, with cards bearing numbers or other designations, (II) in which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined, and (III) in which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards, including (if played at the same location) pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo; and (ii) card games that – (I) are explicitly authorized by the laws of the State, or (II) are not explicitly prohibited by the laws of the State and are played at any location in the State ...” Class II gaming “does not include (i) any banking card games ... or (ii) electronic or electromechanical facsimiles of any game of chance or slot machine of any kind.” Subject to certain provisions as set forth in IGRA and oversight by the NIGC, Class II gaming is regulated by tribes.

- Class III gaming refers to “all forms of gaming that are not Class I or Class II gaming.” This includes slot machines, other video and electronic games of chance, craps, roulette, pari-mutuel wagering, and house-banked card games like blackjack. Class III gaming is governed by Tribal-State compacts with NIGC oversight.<sup>12</sup>

## CLASS II MACHINE GAMING

Although Class II gaming includes traditional paper bingo and pull-tabs, it is largely dominated by electronic bingo and pull-tab machines.<sup>13</sup> As shown in Table 1, there are currently 70 tribes operating 48,970 Class II gaming machines in 156 Indian gaming facilities (see Appendix C for a list of facilities).<sup>14</sup> In 2005, total Class II machine gaming revenue was approximately \$2.6 billion, while non-gaming revenue and tribal government revenue associated with Class II machine gaming were approximately \$147.3 million and \$589.2 million, respectively.<sup>15</sup>

Table 1. Current Class II Gaming Machine Market	
Tribes	70
Facilities	156
Class II Machines	48,970
Gaming Revenue in 2005 (\$ Millions)	\$2,588.9
Non-Gaming Revenue in 2005 (\$ Millions)	\$147.3
Tribal Government Transfers in 2005 (\$ Millions)	\$589.2
Source: NIGC data and <i>Indian Gaming Industry Report</i> .	

<sup>12</sup> Indian Gaming Regulatory Act, 25 U.S.C § 2710.

<sup>13</sup> It is the NIGC’s view that some gaming machines operated by tribes as Class II machines fail to meet the existing Class II classification standards and are thus Class III games. See Methodology in the Lost Gaming Revenue section of Chapter 5 for further discussion.

<sup>14</sup> NIGC; Meister, Alan, *Indian Gaming Industry Report*, 2006-2007 Edition, Newton: Casino City Press.

<sup>15</sup> Derived via analysis of tribal financial data provided by the NIGC. See Methodology in the Lost Non-Gaming Revenue section and Lost Tribal Government Revenue section of Chapter 5 for further discussion.

As shown in Table 2, there are 15 states with Class II machines: Alabama, Alaska, Arizona, California, Florida, Minnesota, Montana, Nebraska, New York, Oklahoma, South Dakota, Texas, Washington, Wisconsin, and Wyoming. It is important to note that while Class II machine gaming is operated across the country, it is highly concentrated in two states: Oklahoma and Florida. Combined, these two states account for 75 percent of the total number of Class II machines. Oklahoma alone has 57 percent of the machines. Behind Oklahoma and Florida, California and Alabama have the largest number of Class II devices.

<b>Table 2. Current Class II Gaming Machine Market by State</b>			
<b>State</b>	<b>Tribes</b>	<b>Facilities</b>	<b>Machines</b>
Alabama	1	3	2,134
Alaska	1	1	30
Arizona	2	2	56
California	6	7	4,190
Florida	2	7	8,577
Minnesota	1	12	109
Montana	6	7	627
Nebraska	3	4	297
New York	2	3	1,258
Oklahoma	25	87	28,101
South Dakota	2	2	64
Texas	1	1	1,325
Washington	16	17	1,721
Wisconsin	1	1	361
Wyoming	1	2	120
Total	70	156	48,970
Source: NIGC data and <i>Indian Gaming Industry Report</i> .			

These statistics in Tables 1 and 2 reflect substantial growth over time. In fact, the Class II gaming machine segment of the Indian gaming industry has been growing at a much faster rate than Class III gaming.<sup>16</sup> This growth of Class II machine gaming can be attributed to two key factors.<sup>17</sup> First, Class II gaming machines have been evolving rapidly. Technological advances have allowed Class II machines to more closely mimic the look and feel of Class III machines. Relative to their predecessors, current Class II machines are generally more advanced, visually appealing, and capable of generating greater revenue.

The second factor leading to the dramatic growth of Class II machine gaming has been the fact that some gaming markets in Class II-only states are in the early stages of development. Furthermore, many of these states are smaller markets, often with only a few tribes/facilities and little local competition outside Indian gaming. Thus, there have been good

<sup>16</sup> Meister, Alan, *Indian Gaming Industry Report*, 2006-2007 Edition, Newton: Casino City Press.

<sup>17</sup> Meister, Alan, *Indian Gaming Industry Report*, 2006-2007 Edition, Newton: Casino City Press.

opportunities to expand existing facilities and/or develop additional facilities in these markets.

Despite its impressive growth, Class II machine gaming only represents a small portion of the total Indian gaming industry. In 2005, it represented approximately 11 percent of total gaming revenue generated at Indian gaming facilities.<sup>18</sup> While the contribution of Class II machine gaming to the Indian gaming industry is small relative to that of Class III gaming, it is not insignificant or inconsequential. It plays an important role in the industry. First, Class II gaming machines are extremely important to tribes:

- Where Class III gaming is not permitted, Class II machines have provided tribes viable gaming devices. Currently, this is the case in the states of Alabama, Alaska, California (only the Lytton Band of Pomo Indians), Florida, Nebraska, and Texas.<sup>19</sup>
- Where Class III gaming is permitted, Class II machines have been used to supplement Class III machines. This may be desirable for tribes where there exist restrictions on allowable Class III gaming (e.g., caps on the number of Class III machines that can be operated; a limit on the number of Class III gaming facilities that can be operated by a tribe; revenue sharing associated with Class III machines; and restrictions on the type and/or quality of Class III machines that can be operated). Currently, this situation exists in Arizona, California (all but the Lytton Band of Pomo Indians), Minnesota, Montana, New York, Oklahoma, South Dakota, Washington, Wisconsin, and Wyoming.
- Whether or not Class III gaming is permitted, Class II machines may provide some leverage in Class III compact negotiations or renegotiations. Class II machine gaming represents a potential fallback position for a tribe should a state refuse to negotiate/renegotiate a compact or not negotiate in good faith. The strength of the bargaining position of any particular tribe is affected by the quality of allowable Class II machines.

Second, Class II machine gaming is important to the casino gaming market. In geographic areas where casino gaming is otherwise non-existent, Class II machines provide casino patrons a local gaming option. In geographic areas where casino gaming is limited or some distance away from patrons, Class II machines may provide some degree of competition. Competition between Class II and Class III machines is likely to be greater when there is less of a difference between the quality and performance of Class II and Class III machines and/or when Class II machine gaming is located closer to patrons than Class III machine gaming.

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<sup>18</sup> Class II machine revenue as a percentage of total gaming revenue at Indian gaming facilities = \$2.589 billion / \$22.630 billion = 11.4 percent. Source: NIGC.

<sup>19</sup> In Florida, slot machines were authorized at three racetracks and one jai-alai fronton. This is expected to finally open the door to Class III gaming at Indian gaming facilities in the state. For further discussion, see the State-by-State Review of Class II Machine Gaming in Chapter 5.

## **PROPOSED CHANGES TO CLASS II REGULATIONS**

In May 2006, the NIGC proposed changes to the regulation of Class II Indian gaming. Overall, the proposed changes, which include amending definitions and game classification standards, are intended to more clearly distinguish Class II gaming from Class III gaming.<sup>20</sup> Generally, the proposed changes are expected to be more restrictive than existing regulations and are likely to limit the types of gaming machines that are currently being operated as Class II devices.

According to the Proposed Rules,<sup>21</sup> Class II machines would have to meet the following requirements:<sup>22</sup>

- Bingo or other games similar to bingo
  - Players must compete against one another.
  - Although the NIGC encourages play with six or more participants, a game can begin with a minimum of two players if six players do not enter a game within two seconds after the first player enters.
  - Bingo cards must be used; however, those cards may be electronic.
  - Bingo cards must be provided to players before numbers are drawn.
  - Each card played in a game must have an equal chance of obtaining any winning pattern.
  - Technological aids are permitted but they must prominently display using two inch letters a message that it is a game of bingo or game similar to bingo.
  - One-half of the screen must display the bingo game at all times.
  - Alternative technologic displays of game results (e.g., game theme graphics, spinning reels, or other imagery) are permitted as long as the game results on the electronic bingo card are always shown.
  - Numbers must be randomly drawn (without replacement) in real time or very near real time to the actual play of the game.
  - Different entry wagers are permitted.
  - The prizes in the game may be increased or progressive prizes offered based upon a higher entry wager.
  - All prizes must be based upon achieving pre-designated winning patterns common for all players.
  - An "ante-up" format is permitted.

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<sup>20</sup> Proposed Rule, 25 CFR Part 502, Definition for Electronic or Electromechanical Facsimile, *Federal Register* 71 (101), May 25, 2006; Proposed Rule, 25 CFR Part 502 and 546, Classification Standards, Class II Gaming, Bingo, Lotto, et al., *Federal Register* 71 (101), May 25, 2006.

<sup>21</sup> Proposed Rule, 25 CFR Part 502, Definition for Electronic or Electromechanical Facsimile, *Federal Register* 71 (101), May 25, 2006; Proposed Rule, 25 CFR Part 502 and 546, Classification Standards, Class II Gaming, Bingo, Lotto, et al., *Federal Register* 71 (101), May 25, 2006.

<sup>22</sup> This list is not intended to be a complete list of requirements, but rather a summary of the key classification standards. For a complete list of the standards, see the Proposed Rules. Not included or addressed in this report are technical standards proposed by the NIGC (Proposed Rule, 25 CFR Part 547, Technical Standards for "Electronic, Computer, or Other Technologic Aids" Used in the Play of Class II Games, *Federal Register* 71 (155), August 11, 2006).

- An "auto-daub" feature is not permitted; thus, players must take overt action to daub (i.e., cover) numbers at least one time in each round after numbers are drawn.
  - The minimum time for players to daub numbers must be two seconds.
  - A game is won by the first person covering the pre-designated game-winning pattern.
  - There must be at least two releases of numbers before a game-winning pattern is created.
  - A game-winning prize must be awarded in every game.
  - Gaming-winning prizes must be at least 20 percent of the amount wagered and have a minimum value of one cent.
  - Prizes may not be based on an event not directly related to the game.
  - All prizes must be fixed in amount or established by formula and be disclosed to all players in the game.
  - The use of a payable for determining prizes is permitted.
  - Pre-designated interim prizes may be offered but all players in a game must be competing for the same set of prizes.
  - "Stand-alone progressives" and "mystery jackpots" are not permitted.
  - A "gamble feature" is not permitted.
  - "Residual credit removal" is not permitted.
  - "Free games" are permitted as a marketing tool as long as all players participating in the game that led to the free games receive the same number of free games.
- Pull-tabs
    - The game must exist in a tangible format (e.g., paper) and be readily accessible to the player at the player station.
    - The tangible pull-tab must contain the information necessary to determine if a player won a prize.
    - Technological aids are permitted but they must prominently display using two inch letters a message stating that it is a game of pull-tabs.
    - Alternative displays of game results (e.g., game theme graphics, spinning reels, or other imagery) are permitted as long as the game results are always shown along with important player information.
    - The game may not accumulate credits.
    - The player station may not pay out winnings, or dispense vouchers or receipts representing such winnings.



### 3. Qualitative Review of the Potential Economic Impact of Proposed Changes to Class II Gaming Regulations

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If the proposed changes to Class II regulations are enacted and found to be legally enforceable, they are generally expected to have a significant negative economic impact on Class II machines. However, the impact may vary significantly from state to state and tribe to tribe depending on the particular circumstances unique to each situation. The proposed regulatory changes may also have a broader economic impact on the Indian gaming industry. While there are a variety of types of impacts, some are difficult to quantify and/or lack sufficient data for a quantitative analysis. Furthermore, although some of the potential economic impact may be felt immediately, especially upon tribes currently operating Class II gaming machines, there may be long-term effects as well.

This chapter provides a qualitative review of the potential economic impacts of the proposed changes to Class II gaming regulations. Each of these potential impacts is independently reviewed below. However, note that the impacts are not *necessarily* additive (i.e., the sum of the individual impacts may be less than or greater than the actual total impact). In fact, some impacts are already likely to be captured in the quantification of other impacts.<sup>23</sup> Overall, it is difficult to determine the cumulative effect a priori. Chapter 5 of this report estimates the magnitude of the quantifiable economic impacts.

#### THE IMPACT ON CLASS II GAMING MACHINES

Based upon my review of the Proposed Rules, comments from industry participants, and discussions with NIGC staff,<sup>24</sup> I understand that the proposed Class II regulation changes are restrictive in nature. In achieving the NIGC's goal of further differentiating Class II gaming from Class III gaming, the regulation changes would also make newly compliant Class II machines inferior to existing Class II machines. Specifically, Class II machines would become:

- Slower – Additional delays would be required between and during games.
- More cumbersome to play – Additional daubing and wait time would be introduced into the games.
- Less diverse – Requirements of common winning patterns, payback percentages, and probabilities of winning would limit the variety of machines that could be made available to patrons on a gaming floor.

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<sup>23</sup> For example, at least some of the effects of decreased variety and quality of Class II machines, as well as temporary and/or partial gaming facility closures, are likely to be captured in lost gaming revenue.

<sup>24</sup> Proposed Rule, 25 CFR Part 502, Definition for Electronic or Electromechanical Facsimile, *Federal Register* 71 (101), May 25, 2006; Proposed Rule, 25 CFR Part 502 and 546, Classification Standards, Class II Gaming, Bingo, Lotto, et al., *Federal Register* 71 (101), May 25, 2006; comments by tribes and gaming manufacturers (<http://www.nigc.gov/ClassIIGameClassificationStandards/tabid/620/Default.aspx>); telephone conversations with tribes, gaming manufacturers, and NIGC staff during the course of my assignment.

Given these changes, newly compliant Class II machines would be less appealing to patrons and generate less gaming revenue than current Class II machines. This decrease would come from two sources. First, fewer total visits would likely be made to Class II gaming facilities. Some patrons may make fewer visits to Class II gaming facilities, while others may stop visiting altogether. The effect is especially dependent upon gaming alternatives that are available to patrons. Second, when patrons do visit, some may decrease their spending. This can result from a decrease in the appeal of the machines and/or a decrease in the amount of time that machines are available for play (e.g., if utilization of machines is 100 percent and the machines are slower, fewer plays of the machines can be made).

## **OPTIONS FOR TRIBES OPERATING EXISTING CLASS II GAMING MACHINES**

Assuming the regulation changes go into effect and that they are found to be legally enforceable,<sup>25</sup> there are three potential options for tribes currently operating Class II gaming machines:

- (1) **Adopt compliant gaming machines** – If a tribe wants to continue operating Class II gaming machines and it has no other viable alternative, then it must adopt gaming machines compliant with the proposed regulations.
- (2) **Adopt an alternative** – If a tribe has an alternative that would be more profitable than compliant gaming machines, then it would surely shift to the alternative. Furthermore, if the alternative turned out to be more profitable than current Class II machines (e.g., Class III machines), then a tribe would be better off than its current situation. One may argue that if the alternative would make a tribe better off, it would have already been doing it. However, this is not necessarily the case. Alternatives may only become available as a result of the proposed Class II regulation changes (e.g., a tribe may choose to enter into a compact or renegotiate a compact when it otherwise would not do so; the Department of the Interior may consider granting requests for Secretarial Procedures more often and/or more quickly; a tribe may discover an existing alternative that it was not previously aware of; tribes and/or gaming manufacturers may develop new alternatives).

If on the other hand, an alternative were more profitable than compliant gaming machines but less profitable than current Class II machines, then a tribe would still choose the alternative but be worse off than its current situation.

Note that if a tribe currently offering Class II machines is able to introduce Class III gaming or add more Class III machines as an alternative to Class II machines, then it could continue operating the Class II machines, which would be considered Class III machines under the proposed regulation changes.

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<sup>25</sup> Based upon my discussions with tribes, casinos, and gaming manufacturers during the course of my assignment, I understand that it is likely that various tribes will file lawsuits against the NIGC over the legality of the proposed regulation changes, if enacted.



In theory, an alternative could be something other than gaming. However, in most cases, non-gaming alternatives are not likely to be as viable as gaming alternatives.

- (3) **Shut down** – If a facility were no longer able to generate sufficient revenue to cover its variable costs of operation, a tribe may shut down the facility. In the short run, it seems likely that tribes without a viable alternative would try to work with whatever is allowed under the new regulation changes. However, in the long run, if gaming revenue losses at some gaming facilities are too large, those facilities may be forced to shut down. Indeed, given the large expected decrease in revenue (see Chapter 5 below), it is likely that some smaller Indian gaming facilities that are only marginally profitable would have to shut down. Unfortunately, in the aggregate analyses set forth in this report, there is no way to identify these cases.

## **THE DIRECT ECONOMIC IMPACT ON CLASS II GAMING FACILITIES AND THEIR RESPECTIVE TRIBES**

In light of the effects of the proposed Class II regulation changes and the options available to tribes currently operating Class II gaming machines, there would be several negative economic impacts on Class II machine gaming facilities and the tribes that operate them:

- (1) Lost gaming revenue;
- (2) Lost non-gaming revenue;
- (3) Decreased variety and quality of Class II machines;
- (4) Temporary and/or partial gaming facility closures;
- (5) Lost tribal government revenue;
- (6) Increased costs; and
- (7) Lost tribal member jobs.

### **Lost Gaming Revenue**

Because the proposed regulation changes will slow down Class II gaming machines, make them more cumbersome to play, and cause them to be less appealing to patrons in comparison to current Class II machines, there would likely be a decrease in gaming revenue from Class II machines. First, a slowdown of machines reduces the amount of time available for play. Thus, fewer dollars can be generated by a machine when it is utilized 100 percent of the time or when patrons are time constrained (i.e., patrons have a limited amount of time to gamble). Second, a less appealing Class II machine could also decrease consumer demand. Patrons may come less often, maybe not at all, or go somewhere else instead (e.g., a Class III Indian gaming facility, a commercial casino, or a racino).

The decrease in gaming revenue may vary widely from state to state and tribe to tribe depending on the legal landscape, political environment, existing market conditions, and the availability of viable alternatives to Class II machines. In terms of the latter, if tribes that

have an alternative to Class II machines, there may be little or no decrease in gaming revenue. The impact depends on how well the alternative ultimately performs. If the alternative does at least as well as existing Class II machines,<sup>26</sup> then there is no loss. In some instances, a tribe could discover that after the introduction of Class III machines as replacements to Class II machines, it may actually be better off because the alternative sufficiently outperforms existing Class II machines. If the alternative does not perform as well as existing Class II machines, then the loss would be equal to the revenue generated by existing Class II machines minus that generated by the alternative.

If tribes do not have a viable alternative to Class II machines, they would have to adopt lower revenue-generating Class II machines that comply with the proposed regulation changes. In the extreme, if the revenue loss to a gaming facility were large enough, it could put them out of business. Although such individualized outcomes cannot be predicted by an aggregate economic model, such as that used in Chapter 5, it is a realistic possibility for some tribes given the magnitude of the expected lost revenue (see Chapter 5 for further details). And if lost revenue is significant enough to force a gaming facility to shut down, then lost gaming revenue for that facility would equal current gaming revenue. For this reason, lost gaming revenue estimated in Chapter 5 is likely to be conservative.

Overall, a decrease in gaming revenue may be reflected by a decrease in revenue per machine and/or a decrease in the number of gaming machines in operation.<sup>27</sup>

### **Lost Non-Gaming Revenue**

If there is a decrease in gaming revenue, there is also likely to be an associated decrease in non-gaming revenue. Many Indian gaming facilities now offer on-site non-gaming amenities such food and beverages, lodging, retail, and entertainment. While historically many Class II facilities have not had much in the way of non-gaming amenities except some food and beverages, this has been changing. In recent years, the general trend in the Indian gaming industry has been towards the addition or expansion of non-gaming amenities. This has occurred for two reasons. First, they often generate a revenue stream of their own. According to aggregate tribal financial data, non-gaming revenue was approximately 13 percent of gaming revenue at Indian gaming facilities nationwide in 2005.<sup>28</sup> For facilities with Class II machines, the contribution is much less at six percent of gaming revenue. The second reason for the trend towards more non-gaming amenities is the positive impact they tend to have on gaming revenue. Good quality amenities tend to draw people from farther distances, encourage them to stay longer, and spend more money.

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<sup>26</sup> If an alternative requires revenue sharing (e.g., Class III machines), it must outperform existing Class II machines by a margin equal to its revenue sharing.

<sup>27</sup> For further discussion, see the Methodology section under Lost Gaming Revenue in Chapter 5.

<sup>28</sup> Analysis of NIGC data.

## **Decreased Variety and Quality of Class II Machines**

The enactment of the proposed regulation changes is likely to change the landscape of the Class II machine manufacturing market, which in turn will have an impact on tribes that continue to offer Class II machines. As previously noted, the proposed regulation changes are likely to decrease demand for Class II machines. Tribes currently with Class II machines will either convert to compliant Class II machines, which are likely to be less appealing to patrons and generate less revenue, or shift to available alternatives (e.g., Class III gaming). Given economies of scale inherent in the manufacture of gaming machines (i.e., lower per unit costs as more units are manufactured),<sup>29</sup> a decrease in demand may result in higher costs per Class II machine. On the whole, some manufacturers may no longer find it profitable to stay in the market.<sup>30</sup> And a decrease in competition among manufacturers would likely lead to a decrease in the variety and/or quality of Class II machines.

While the proposed regulation changes would likely have a negative impact on the Class II machine manufacturing market, and thus tribes that operate compliant Class II machines, the regulation changes would be likely to benefit the Class III machine manufacturing market as there would be an increase in demand when some gaming operations shift from Class II to Class III machines.<sup>31</sup>

## **Temporary and/or Partial Gaming Facility Closures**

Given that no existing Class II machines meet the proposed regulation changes, tribes would be required to remove, modify, or replace every Class II machine currently in operation. This could take some time as compliant Class II gaming systems must be developed, tested, certified by independent laboratories, and installed/modified in gaming facilities across the country. Currently, gaming machine manufacturers are estimating that it could take more than a year, even up to 24 months, to accomplish these tasks.<sup>32</sup> The actual timeline would depend on how many machines ultimately need to be replaced/modified,<sup>33</sup> how many manufacturers are left in the market, which manufacturers remain, how close a manufacturer's existing machines are to meeting the proposed regulations, a manufacturer's current engineering capabilities, possible backlogs at gaming machine laboratories, and how

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<sup>29</sup> For example, product research and development costs are spread over more machines as the number of manufactured machines increases.

<sup>30</sup> Some major manufacturers, such as IGT and Bally Technologies, have entered the Class II machine manufacturing market in the past few years as a result of the increasing demand for Class II machines. If this demand is eliminated or reduced by the proposed Class II regulation changes, it is likely that a number of manufacturers will leave the market because of a likely decrease in profitability. As a matter of fact, at least one manufacturer has unequivocally said that it would not continue making Class II machines if the regulation changes were enacted. Other manufacturers have stated they are unsure whether they would remain in the market. Source: Discussions with gaming machine manufacturers.

<sup>31</sup> For the manufacturers that make both Class II and III machines, the loss in the Class II market may be offset to some degree by a gain in the Class III market if they earn some of the shift in business.

<sup>32</sup> Based upon phone discussions with several major Class II gaming machine manufacturers and comments from industry participants.

<sup>33</sup> If existing Class II machines are modified or replaced with compliant machines, then what is relevant is the number of Class II machine manufacturers that remain in the market and their manufacturing/modification capacities. However, if some tribes were to switch to Class III gaming, then the number of Class III machine manufacturers and their manufacturing capacities also become important.

quickly issues can be resolved after machines have been submitted to a lab and/or the NIGC.

Initially, the proposed regulation changes would give tribes six months to become compliant.<sup>34</sup> If this is not sufficient time and good cause is shown, then tribes may request one or more six-month extension periods. Based upon discussions with the NIGC staff, they have acknowledged that up to two or three such extension periods may be warranted in order for some tribes to become fully compliant. If compliant gaming devices are not ultimately ready within whatever time tribes are allowed by the NIGC, tribes will have to temporarily shut down Class II machines until they are compliant. Temporary shut downs would likely cause major business disruptions, particularly if Class II machines comprise a large proportion of a gaming facility's revenue generation capabilities (e.g., in a Class II-only facility).

The physical replacement and/or modification of *all* Class II machines in a gaming facility may also result in some temporary and/or partial closures. This is particularly relevant where there is a large number of existing Class II machines. If there is not enough time to replace and/or modify all machines on a gradual basis, gaming facilities may find themselves rushing to complete the process and be forced to replace and/or modify everything simultaneously.

### **Lost Tribal Government Revenue**

For tribes that experience a decrease in revenue and/or an increase in costs at their gaming facilities, there will be a subsequent loss in tribal government revenue because gaming profits are transferred from gaming facilities to tribes. This decrease in tribal government revenue would translate into a decrease in funding of tribal government operations, tribal programs and services, per capita payments, if any are made, and/or the development of other tribal enterprises.<sup>35</sup> Some tribes that rely heavily on Class II machines for tribal government revenue could be severely impaired if facilities are forced to shut down. Essential tribal operations, programs, and services could be in jeopardy of being lost.

### **Increased Costs**

There are a number of new or additional costs that may have to be incurred by tribes as a result of the proposed Class II regulation changes. These costs include: capital costs; regulatory costs; training costs; revenue-sharing costs; and financing costs.

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<sup>34</sup> Proposed Rule, 25 CFR Part 502 and 546, Classification Standards, Class II Gaming, Bingo, Lotto, et al., *Federal Register* 71 (101), May 25, 2006.

<sup>35</sup> See Chapter 2 of this report for the allowable uses of tribal gaming profits. Tribes may also decrease donations to charitable organizations, but this does not reflect direct losses to the tribe. Tribes may not be able to reduce funds paid to local government agencies (e.g., mitigation payments or revenue sharing) if they are agreed to in binding agreements. In any case, amounts paid to local governments are not direct losses to the tribe. Decreased payments, if possible, may however damage relations between the tribal and local governments.

Currently, I understand that there are no Class II gaming machines that would meet the requirements of the proposed regulation changes.<sup>36</sup> Therefore, if the proposed regulation changes go into effect, all existing Class II machines operated by tribes must be modified or replaced (either with compliant Class II machines or available alternatives). And there may be significant capital costs associated with modifying or replacing Class II gaming machines.<sup>37</sup>

I also understand that while some of these switching costs may be initially borne by gaming manufacturers, some and possibly all of them are likely to be passed along to tribes.<sup>38</sup> This would come in the form of higher purchase prices or participation fees. Switching costs may include the costs to modify or replace entire gaming systems (i.e., electronic player stations, servers, and operating software) and/or related components (e.g., the currency system) if they also need to be replaced.

At this time, there is a great deal of uncertainty surrounding the manufacture of Class II machines under the proposed Class II regulation changes. Manufacturers are unsure of exactly how many machines will need to be replaced or modified, whether Class II machines would continue to be leased to tribes as opposed to being sold, the cost of replacing and/or modifying existing Class II machines, participation fees if machines are leased, and purchase prices if Class II machines are sold. In fact, some manufacturers are unsure if they will even continue to make Class II machines at all. Given these uncertainties, the wide variation in practices and policies across manufacturers, and the varying circumstances for each tribe, it is difficult to reliably measure potential increased capital costs at this time.

In addition to capital costs, there may be other potential increased costs as a result of modifying or replacing a gaming facility's entire stock of gaming machines. Costs of regulation, employee training, and customer training will likely be incurred in order to make sure that all relevant parties (i.e., tribal regulators, casino employees, and gaming patrons) are familiar with the new machines. These costs are also difficult to quantify, given the uncertainties that exist and the unique situation of each facility.

If in response to the proposed regulation changes, tribes shift from Class II to Class III machines, they may also have to incur revenue-sharing costs. It will depend however on the status of existing compacts. For tribes with revenue sharing agreements in their existing compacts (e.g., Oklahoma), a full shift from Class II to Class III machines would mean an increase in revenue-sharing costs. For tribes without existing gaming compacts (e.g., Florida), the introduction of Class III machines would require compacts, which may or may not include revenue sharing agreements. The likelihood of revenue sharing and expected revenue sharing rates would depend on negotiations between tribes and states. They would

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<sup>36</sup> Based upon comments from tribes, casinos, gaming manufacturers, and NIGC staff.

<sup>37</sup> There will be capital costs for tribes that shift from Class II to Class III machines. However, if Class III machines do in fact perform better than the Class II machines which they are replacing, then the gaming revenue gains (and non-gaming revenue gains associated with the gaming revenue gains) may offset increased capital costs.

<sup>38</sup> If machines are sold rather than leased, as is the current norm, the risk associated with owning lower-revenue generating compliant machines would be shifted from manufacturers to tribes.

be determined based on a variety of factors and probably vary widely depending on the circumstances of each situation. Of course, for tribes without revenue sharing agreements in existing compacts, there would be no revenue sharing costs incurred.

In addition to the aforementioned costs, there may also be increased financing costs. For existing financing, such as for the construction or renovation of gaming facilities, a decrease in Class II machine revenue may trigger additional costs, such as increased interest rates, penalties, and possibly even defaults. For future financing, the result may be the inability to obtain financing or, if available, inferior financing terms.

### **Lost Tribal Member Jobs**

If gaming facilities, and subsequently tribal governments, experience a decrease in revenue as a result of the proposed regulatory changes, tribes may find it necessary to reduce their workforce, which typically includes tribal members.

## **THE GENERAL ECONOMIC IMPACT ON THE INDIAN GAMING INDUSTRY**

The proposed regulation changes would likely have other broader economic impacts on the Indian gaming industry as well, including:

- (1) Decreased leverage in Class III compact negotiations/renegotiations;
- (2) Restriction of new entry into the Class II machine market; and
- (3) Changes in competition for Class III gaming.

### **Decreased Leverage in Class III Compact Negotiations/Renegotiations**

In accordance with IGRA, Class III gaming compacts govern the operation of Class III gaming. The negotiation/renegotiation of compacts is often a very difficult process. Thus, as in most types of negotiations, relative bargaining positions are very important. The party that has the stronger bargaining position is more likely to get a favorable outcome on issues within the negotiation/renegotiation. In terms of gaming compacts, important issues include tribal sovereignty, the degree of state regulatory authority, the types and number of games, the number of gaming facilities, revenue sharing, exclusivity, and voluntary compliance with various non-tribal codes (e.g., environmental, labor, and zoning).

In the negotiation/renegotiation of compacts, Class II machine gaming has played an important role by serving as leverage for tribes. If states refuse to negotiate/renegotiate with tribes or do not do so in good faith, tribes can turn to Class II machines, over which the state has no say. In essence, Class II machines can serve as a fallback position for tribes.

However, if the viability of Class II machines is diminished (i.e., a decrease in revenue and/or an increase in costs), as is expected to be the case with the proposed Class II regulation changes, at least some of a tribe's leverage in negotiating/renegotiating gaming



compacts would be lost. The degree of the lost leverage ultimately depends on other circumstances, such as the well-being of both state and tribal economies, competition, the types and quantity of gaming contemplated, and whether the compact is for new gaming or the expansion of existing gaming. But if sufficient leverage is lost, the result could be refusals by states to negotiate/renegotiate gaming compacts or tribes having to negotiate unfavorable compacts (e.g., curtailing of tribal sovereignty or an increase in revenue sharing).

### **Restriction of New Entry into the Class II Machine Market**

New entry into the Class II machine market, in the form of new and expanded Class II gaming facilities, would likely be restricted under the proposed regulatory changes. The expected decrease in revenue and expected increase in costs of operating compliant Class II machines (as noted in previous sections of this chapter) would substantially reduce the potential profitability of Class II machines. This, in turn, could make it uneconomical to construct new facilities or renovate existing ones. While this result is likely to limit the extent of future competition in Class II machine gaming markets, the benefits of reduced competition would accrue to tribes operating compliant Class II machines. However, this impact may not be significant if the market potential for compliant Class II machines is small to begin with.

### **Change in Competition for Class III Gaming**

While the proposed Class II regulation changes may provide greater clarity regarding the distinction between Class II and Class III machines if legally enforceable,<sup>39</sup> they will do so in a way that will likely affect the degree of competition in the Indian gaming industry. First, consumers are likely to view compliant Class II machines as less desirable substitutes for Class III machines than current Class II machines. This would decrease the ability of Class II machines to compete against Class III gaming. Gaming patrons may just participate in alternative forms of gaming or at alternative locations, including Class III gaming facilities. While this would result in a negative impact on Class II machine operators, it could have a positive impact on Class III gaming facilities if they pick up the additional business.

Second, if the proposed regulation changes force some tribes to shift from Class II machines to Class III machines, this could increase the degree of competition within the Class III machine gaming market.

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<sup>39</sup> If regulation changes amend game definitions and classification standards to more clearly define Class II gaming, they may help create some sense of stability in the marketplace. In the past, there has been some sense of uncertainty as to what is allowed. In fact, the NIGC has had a number of disputes with tribes and manufacturers over what is and what is not a Class II machine. As a result, there has been and continues to be a potential threat by the NIGC to fine or close down facilities that it deems not to be in compliance.

## 4. Data

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As identified below, I have compiled information from what I believe to be reliable sources. While third-party data were not independently audited, they were cross-checked with other sources wherever possible.

Tribal financial information, including gaming revenue, non-gaming revenue, and transfers of profits from gaming facilities to tribal governments, were provided confidentially by the NIGC. These data come directly from audited financial statements submitted by the tribes to the NIGC.<sup>40</sup> The most recent year of available data is 2005.

For a small number of gaming facilities, financial information (e.g., gaming revenue, non-gaming revenue, and transfers to tribal governments) was incomplete in the NIGC data.<sup>41</sup> It is my understanding that these data gaps may be the result of information not being submitted by tribes (at all or on time). While the facilities with missing values could not be included in the calculation of market statistics defined below (e.g., revenue per machine per day, ratio of non-gaming to gaming revenue, and ratio of tribal government revenue to total casino revenue), they were still included in the quantifiable impacts.<sup>42</sup>

Generally, gaming revenue is defined as all amounts wagered minus prizes and payouts. Class II machine revenue, which is of primary interest in this report, was not explicitly provided in the tribal financial information provided by the NIGC. Therefore, it was calculated as a proportion of total gaming revenue. Based upon the nationwide Indian gaming average, total machine revenue is approximately 89 percent of total gaming revenue.<sup>43</sup> For Class II gaming facilities, total machine revenue is equal to Class II machine revenue because all machines are Class II. For Class III facilities with Class II machines, total machine revenue includes revenue from both Class II and Class III machines. Therefore, in order to separate out Class II machine revenue, it was assumed to be proportional to the share of Class II machines in operation. In other words, total machine revenue was multiplied by the ratio of the number of Class II machines to the total number of gaming machines. In order to account for the fact that Class III machines have a higher revenue generation capability than Class II machines, Class III machines were given a weight of one and a half times that of Class II machines in the aforementioned ratio.<sup>44</sup>

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<sup>40</sup> Data were provided in electronic databases.

<sup>41</sup> Gaming revenue was not available for a small subset of gaming facilities with Class II machines (11 of 137 facilities in 2005).

<sup>42</sup> In terms of lost Class II machine revenue, these facilities were accounted for in the number of machines to which revenue per machine per day was being applied. For further discussion of the methodology for calculating lost Class II machine revenue, see the Lost Gaming Revenue section of Chapter 5.

<sup>43</sup> Joseph Eve, *The 2005 Indian Gaming Cost of Doing Business Report*, 2005.

<sup>44</sup> An analysis of NIGC data and discussions with gaming machine manufacturers revealed that on a nationwide basis the average revenue per Class III machine is approximately one and a half times greater than the average revenue per Class II machine.



Non-gaming revenue is defined as any gaming facility revenue that is not directly generated by gaming activities. Non-gaming revenue includes revenue from food and beverages, lodging, retail, entertainment, and any other non-gaming operations. In order to estimate the proportion of non-gaming revenue that was attributable to Class II machines, it was assumed to be proportional to the share of Class II machines in operation, where Class III machines were weighted one and a half times more than Class II machines (as was done for estimating Class II machine revenue from total machine revenue).

Transfer of profits from gaming facilities to tribes is the amount of profit that was available for the tribe to use as prescribed by IGRA.<sup>45</sup> In order to estimate the proportion of tribal government transfers that were attributable to Class II machines, it was assumed to be proportional to the share of Class II machines in operation, where Class III machines were weighted one and a half times more than Class II machines (as was done above for Class II machine revenue and non-gaming revenue associated with Class II machines).

Data on the number of gaming positions in each Indian gaming facility were obtained from a variety of sources. Class II machine counts for 2005 came from: counts conducted by the NIGC in approximately October 2005; and counts underlying my annual Indian gaming study, the *Indian Gaming Industry Report*,<sup>46</sup> which were effective as of the end of 2005. Appendix E provides the number of Class II machines by state for 2005. Current Class II machine counts were primarily provided by the NIGC in October 2006. These NIGC counts were supplemented with data provided by state gaming regulatory agencies,<sup>47</sup> as well as a couple of tribes and casinos. Table 2 sets forth the current number of Class II machines by state. Class III machine counts were calculated as the total number of machines minus the number of Class II machines. The total number of machines for most states in 2005 came from the *Indian Gaming Industry Report* and were effective as of the end of 2005.<sup>48</sup> For the current total number of machines, current data were not available for most states.

Market statistics (e.g., revenue per machine per day, the ratio of non-gaming revenue to Class II machine revenue, and the ratio of tribal government revenue to Class II machine revenue) were calculated using all facilities that were included in a particular analysis and for which relevant data were available. Revenue per machine per day was computed as Class II machine revenue divided by the number of Class II machines in operation divided by the number of days in the year. For facilities that were open only part of a year, the number of machines was prorated for the portion of the year they were in operation.<sup>49</sup> The ratio of non-gaming revenue to gaming revenue was calculated as the sum of non-gaming revenue associated with Class II machine revenue divided by the sum of Class II machine revenue. The ratio of tribal government transfers to gaming revenue was calculated as the

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<sup>45</sup> See Chapter 2 for further background on tribal uses of profits from gaming.

<sup>46</sup> Meister, Alan, *Indian Gaming Industry Report*, 2006-2007 Edition, Newton: Casino City Press.

<sup>47</sup> Arizona Department of Gaming; various tribal/casino representatives.

<sup>48</sup> Meister, Alan, *Indian Gaming Industry Report*, 2006-2007 Edition, Newton: Casino City Press.

<sup>49</sup> The open date was available for all but one gaming facility opened in 2005. Given that this one facility only had four Class II machines in operation, the inability to prorate their number of machines is immaterial.

sum of tribal government transfers associated with Class II machine revenue divided by the sum of Class II machine revenue.

Data on output per worker (i.e., gaming revenue per worker) were derived from information underlying my annual Indian gaming study.<sup>50</sup> The percentage of gaming facility employees that are tribal members comes from the National Indian Gaming Association (NIGA).<sup>51</sup>

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<sup>50</sup> Meister, Alan, *Indian Gaming Industry Report*, 2006-2007 Edition, Newton: Casino City Press.

<sup>51</sup> NIGA website (<http://www.indiangaming.org/library/indian-gaming-facts/index.shtml>), accessed October 1, 2006.

## 5. Quantitative Analysis of the Potential Economic Impact of Proposed Changes to Class II Gaming Regulations

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Although all of the potential economic impacts noted in Chapter 3 are rooted in economic theory, some are difficult to quantify and/or lack sufficient data for a quantitative analysis. Given these limitations, I have estimated the magnitude of the economic impacts that are readily quantifiable. These impacts are: lost gaming revenue, lost non-gaming revenue; lost tribal government revenue; increased revenue-sharing costs; and lost tribal member jobs. While the other potential economic impacts were not quantifiable at this time, they should be considered qualitatively in conjunction with the quantitative impacts set forth in this chapter.

### LOST GAMING REVENUE

As noted in Chapter 3, the proposed Class II regulation changes will lead to Class II gaming machines that are inferior to existing Class II machines. This would cause a decrease in gaming revenue for tribes that continue operating Class II machines.

#### State-By-State Review of Class II Machine Gaming

There are currently 15 states where Class II gaming machines are operated by tribes: Alabama; Alaska; Arizona; California; Florida; Minnesota; Montana; Nebraska; New York; Oklahoma; South Dakota; Texas; Washington; Wisconsin; and Wyoming. Each state is briefly reviewed below to provide some context for the analysis.<sup>52</sup> Appendix C provides a list of the Indian gaming facilities the NIGC has identified as currently operating Class II gaming machines.<sup>53</sup> Appendix D provides a list of the Indian gaming facilities with Class II machines at the end of 2005.

As of the end of 2005, Oregon also had Class II gaming machines operated by tribes. Although this is no longer the case, this state is discussed below because it was a part of the actual 2005 market, which is the basis for the lost gaming revenue analysis.<sup>54</sup>

When identifying whether gaming facilities would be impacted in terms of gaming revenue, I assume that the proposed Class II regulation changes will be legally enforceable. I have no opinion in this regard.

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<sup>52</sup> Background on each state is based upon input gathered from tribes, casinos, gaming machine manufacturers, NIGC staff, and state gaming regulatory agencies, as well as my research conducted outside the scope of this assignment.

<sup>53</sup> This list was compiled using the most current data available. See the Data chapter for more details.

<sup>54</sup> See the Methodology section below for a discussion of the actual 2005 market.

## **Alabama**

In Alabama, the Poarch Band of Creek Indians (“Poarch Band”) operates Class II gaming machines. It currently operates three gaming facilities with a total of 2,134 Class II gaming machines.<sup>55</sup> In 2005, there were 1,523 Class II machines.<sup>56</sup> As reflected by the growth of its facilities, the Tribe has experienced success with Class II machines.

However, the Tribe’s gaming facilities have seen increased competition in the last couple of years. First, beginning at the end of 2003, greyhound racetracks in Alabama began operating electronic bingo machines that are somewhat faster than what the Tribe is currently offering. Second, in early 2006, new competition came in the form of “sweepstakes machines,” which apparently look and sound much like slot machines. While the intricacies of these sweepstakes machines are beyond the scope of this study, it is my understanding that they identify whether or not a patron won a pre-determined sweepstakes.<sup>57</sup> Although challenged at first, a court decision has deemed these devices to be legal under existing law and they have subsequently spread throughout the state.

The Tribe has noted that the increased competition, which would be considered Class III gaming under existing Indian gaming classification standards, has already had a negative impact on their gaming facilities. In order to remain competitive, the Tribe wants to operate Class III gaming. However, the State of Alabama is unwilling to enter into a gaming compact with the Tribe. Therefore, the Tribe has requested Secretarial Procedures in order to operate Class III gaming.<sup>58</sup> At this time, no significant progress has been made.

Given the current situation, if the NIGC’s proposed Class II regulation changes are enacted, the Tribe would be forced to replace all of its existing Class II machines with compliant devices. In light of the scope of the Class II regulation changes, any new compliant Class II gaming machine would be inferior to the Tribe’s current devices, as well as competitor’s devices (i.e., electronic bingo machines and sweepstakes machines).

## **Alaska**

Currently, there is only one tribe operating Class II gaming machines in Alaska, the Metlakatla Indian Community.<sup>59</sup> It currently operates 30 Class II machines in its single

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<sup>55</sup> NIGC.

<sup>56</sup> Meister, Alan, *Indian Gaming Industry Report*, 2006-2007 Edition, Newton: Casino City Press.

<sup>57</sup> I understand that patrons purchase Internet access cards, and that in doing so, they also receive sweepstakes entries. In order to determine whether an entry was a winner or not, patrons have to either access an Internet website, call an 800 number, or use the sweepstakes machine as an electronic reader. Source: Rose, Nelson, “Court Approves Racino’s Non-Slot Machines,” *Casino City Times* (<http://rose.casinocitytimes.com/articles/27582.html>), June 18, 2006.

<sup>58</sup> When a tribe has been unable to negotiate a compact with a state, the Secretary of the Department of the Interior can prescribe procedures under which Class III gaming may be conducted. Secretarial procedures are authorized by IGRA (25 U.S.C § 2710(d)(7)(vii)).

<sup>59</sup> While a number of other tribes, Native Villages, and tribal organizations operate bingo and pull-tabs, they are not regulated as Class II gaming. They are in fact licensed by the State of Alaska as municipalities and non-profit organizations qualified to conduct charitable gaming activities. None of these charitable gaming activities are allowed to utilize electronic gaming devices.

facility,<sup>60</sup> which is in a remote location. Competition is very limited in the area. There is only charitable gaming, which allows bingo and pull-tabs, but only in paper form.

If the proposed Class II regulation changes are enacted, the Tribe would have no choice but to replace its existing Class II machines with compliant ones. Although, the compliant machines would be inferior to current gaming machines operated by the Tribe, they would still be superior to charitable gaming.

### *Arizona*

In Arizona, tribes primarily offer Class III gaming. In 2005, 15 tribes operated a total of 12,167 gaming machines in 24 facilities (two of which are only traditional bingo halls).<sup>61</sup> Of these machines, only 76 (less than one percent) were Class II.<sup>62</sup> Currently, the tribes operate 12,851 gaming machines in 25 facilities.<sup>63</sup> Only 56 of these machines (less than one percent) are Class II.<sup>64</sup> These machines are offered at two facilities. One of them has 16 Class II machines alongside 950 Class III machines. The other facility is a small Class II-only facility with 40 Class II machines.

As shown by the foregoing counts, Class II machines only play a very minor role in Arizona. This is a result of how the tribes' gaming compacts are structured.<sup>65</sup> Class II machines count towards a tribe's machine cap just like Class III machines. However, revenue from Class II machines is not subject to revenue sharing with the State of Arizona, which is done on a tiered, sliding scale basis of one to eight percent of Class III net win.<sup>66</sup>

Therefore, if the proposed Class II regulation changes were enacted, it would not have a significant effect at this time – only 56 machines are currently at issue. As an alternative to switching to compliant Class II gaming machines, tribes operating Class II machines could shift to Class III machines, which generally generate higher revenue per machine, but which would require revenue sharing.

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<sup>60</sup> NIGC.

<sup>61</sup> Meister, Alan, *Indian Gaming Industry Report*, 2006-2007 Edition, Newton: Casino City Press.

<sup>62</sup> Arizona Department of Gaming, *Status of Tribal Gaming in Arizona as of 02/01/06*, February 2006.

<sup>63</sup> Arizona Department of Gaming, *Status of Tribal Gaming in Arizona as of 10/02/06*, October 2006; Meister, Alan, *Indian Gaming Industry Report*, 2006-2007 Edition, Newton: Casino City Press (for traditional bingo halls).

<sup>64</sup> Arizona Department of Gaming, *Status of Tribal Gaming in Arizona as of 10/02/06*, October 2006.

<sup>65</sup> Each tribe has an initial gaming machine allocation, which increases every five years in accordance with the growth of the state population. On top of this initial allocation, each tribe has an additional gaming machine allocation. This additional allocation represents the number of devices that can be acquired from other tribes not operating their full initial allocation or from the state if a tribe is unable to acquire devices from another tribe. A tribe may operate up to 40 Class II machines per gaming facility, but they count against the tribe's additional allocation. Any Class II machines over 40 would count against the tribe's initial allocation. Source: Model Arizona Tribal-State Gaming Compact, 2003.

<sup>66</sup> One percent of the first \$25 million dollars of Class III net win; three percent of the next \$50 million dollars; six percent of the next \$25 million dollars; and eight percent of Class III net win in excess of \$100 million dollars. Source: Model Arizona Tribal-State Gaming Compact, 2003.

## **California**

Like tribes in Arizona, California tribes primarily offer Class III gaming. In 2005, 55 tribes operated a total of 59,670 gaming machines in 57 facilities.<sup>67</sup> Of these machines, 2,182 (four percent) were Class II.<sup>68</sup> Currently, the tribes operate 61,969 gaming machines, of which 4,190 (seven percent) are Class II.<sup>69</sup> These machines are offered at seven facilities across the state.

In six of those seven facilities, Class II machines are used to supplement Class III machines, which are restricted to a machine cap per their 1999 gaming compacts.<sup>70</sup> These six facilities, which are operated by five tribes (Morongo Band of Mission Indians, Pechanga Band of Luiseño Indians, Rincon Band of Luiseño Mission Indians, San Manuel Band of Mission Indians, and Sycuan Band of the Kumeyaay Nation), currently have 3,170 Class II machines.<sup>71</sup>

The other facility with Class II machines is operated by the Lytton Band of Pomo Indians ("Lytton Band"). This facility currently has 1,020 Class II machines.<sup>72</sup> The Lytton Band operates Class II machines by necessity because it does not have a gaming compact with the State of California. Although a compact was entered into by the Tribe and Governor Schwarzenegger, it did not ultimately receive the required approval from the State Legislature. Furthermore, given the strong opposition the Lytton Band faced and the current political environment, it seems very unlikely that it will be able to get a compact approved for its urban location.

If the proposed changes to Class II regulations were enacted, only the Lytton Band would have to switch to compliant Class II machines because it has no other viable gaming option. However, there would be an identical effect on any other uncompacted tribes that may wish to operate Class II machines in the future.

As for existing gaming tribes that already have compacts, including those tribes currently operating Class II machines within their Class III facilities, they would not necessarily need to switch to compliant Class II machines. Tribes have the ability to increase the number of Class III machines they can operate by renegotiating their compacts.<sup>73</sup> This is evidenced by the recent flurry of renegotiated compacts. In 2004, five tribes successfully renegotiated their

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<sup>67</sup> Meister, Alan, *Indian Gaming Industry Report*, 2006-2007 Edition, Newton: Casino City Press.

<sup>68</sup> NIGC.

<sup>69</sup> NIGC.

<sup>70</sup> Some tribes, including one of the six with Class II machines, have even been held below their Class III machine cap as a result of the statewide machine cap, which according to the California Gambling Control Commission, has already been reached. Some tribes have disagreed with this conclusion.

<sup>71</sup> NIGC.

<sup>72</sup> NIGC.

<sup>73</sup> Per the most-favored tribe clause in the 1999 compacts, California gaming tribes that have not amended their compacts have the right to the same terms and conditions as those tribes that have amended their compacts.

compacts to allow for an increase in the number of Class III machines they can operate.<sup>74</sup> Also, in August 2006, four of the five tribes currently operating Class II machines (all but the Rincon Band) signed renegotiated compacts with the Governor.<sup>75</sup>

California tribes not only have the ability to increase their number of Class III machines by renegotiating their compacts, they are likely to be better off too. If this were not the case, then four of the five tribes with Class II machines would not have recently agreed to the renegotiated compacts.

It is important to note that there are potential drawbacks to adding more Class III machines through compact renegotiations (for more details, see Chapter 3 under Decreased Leverage in Class III Compact Negotiations/Renegotiations). The Tribes with recently renegotiated compacts had to make some concessions, including increased revenue sharing. Also, in the long run, substantial increases in the supply of Class III machines in the market will likely reduce profit margins.

### **Florida**

There are two tribes with Class II gaming machines in Florida. In 2005, they operated a combined total of 8,598 Class II machines in seven facilities.<sup>76</sup> Currently, the tribes operate 8,577 Class II machines.<sup>77</sup> While the tribes have wanted to operate Class III gaming for some time, they have been unable to get the State of Florida to negotiate gaming compacts. Thus, Secretarial Procedures were requested in order to operate Class III gaming.<sup>78</sup> This process, which began back in 1994, has gone very slowly.

However, since early 2005, the likelihood of Class III gaming has increased substantially. In fact, the general sentiment is that it is only a matter of time now before Florida gaming tribes are able to offer Class III machines – either as a result of a negotiated gaming compact or Secretarial Procedures. In terms of a gaming compact, IGRA permits tribes to offer whatever types of gaming are allowed in a state. Thus, with the forthcoming introduction of slot machines at three racetracks and one jai-alai fronton in Broward County, tribes should be able to offer the same at their facilities.<sup>79</sup> On the other front, the Department of the Interior has recently stated that if a gaming compact is not negotiated between the Seminole Tribe of

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<sup>74</sup> In fact, the restriction on the number of machines was eliminated in the 2004 amended compacts. And although the tribes can operate as many machines as they want, the revenue-sharing rate increases as the number of machines increases.

<sup>75</sup> While these compacts were signed by the tribes and Governor, they have not yet received the required approval from the State Legislature. Although there is no certainty that these compacts will be ratified, the general belief is that they will be approved in one form or another to allow for more Class III machines.

<sup>76</sup> Meister, Alan, *Indian Gaming Industry Report*, 2006-2007 Edition, Newton: Casino City Press.

<sup>77</sup> NIGC.

<sup>78</sup> Statement of the Honorable James E. Billie, Chairman, Seminole Tribe of Florida, before the Senate Committee on Indian Affairs, July 21, 1999.

<sup>79</sup> In fact, the first state-license for slot machines was just issued on September 29, 2006 to one of the racetracks. Also, according to the track, they plan to have the machines up and running by the second week in November 2006. Source: Burstein, Jon, "State Issues its First License for Slots in Hallandale," *South Florida Sun-Sentinel*, September 30, 2006.



Florida and the State by November 25, 2006, it will issue Secretarial Procedures for the Tribe's operation of Class III gaming.<sup>80</sup>

While the aforementioned introduction of slot machines in Broward County will increase the tribes' chances of securing gaming compacts, these slot machines will also serve as competition for nearby Indian gaming facilities. In order to be competitive with these commercial gaming facilities, it is likely that the tribes will need to shift to Class III machines, regardless of whether proposed Class II gaming regulations are enacted or not.

Thus, if the Florida tribes are successful in obtaining Class III machines, as expected, the proposed changes to Class II regulations would have no effect on the Florida tribes. However, if the tribes are not able to get Class III gaming or at least until they are able to do so, the proposed regulation changes would force the tribes to switch to inferior Class II gaming.

As noted in the California section, there are potential drawbacks to negotiating a gaming compact. One major drawback is the introduction of revenue sharing. And if recent trends are any indication of what might happen in Florida, the State will want a cut of Class III machine revenues. In the case of Florida, it is uncertain what a reasonable and agreeable rate might be at this point. Revenue-sharing rates will ultimately be determined based upon relative bargaining positions, among other things (e.g., location, type of gaming, expected profitability, degree of competition). Without existing Class II machines, the tribes are likely to be in a weaker bargaining position than they would be otherwise.

### ***Minnesota***

Minnesota is another Class III gaming state with a small amount of Class II gaming. In 2005, 11 tribes operated a total of 21,821 gaming machines in 33 facilities.<sup>81</sup> Of these machines, 69 (less than one percent) were Class II.<sup>82</sup> Currently, there are 109 Class II machines.<sup>83</sup> They are offered at 12 small Class II-only facilities. All of these facilities are operated on fee lands within the reservation of the White Earth Band of Chippewa Indians ("White Earth Band") and some are actually owned by non-tribal members.

Per its gaming compact, the White Earth Band is not limited in terms of the number of Class III gaming machines that can be operated at its Class III gaming facility.<sup>84</sup> However, I understand that the small gaming operations on fee lands are not covered by the Tribe's compact and therefore, are restricted to Class II gaming.<sup>85</sup> Therefore, if the proposed

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<sup>80</sup> Letter from George T. Skibine, Acting Deputy Assistant Secretary for Policy and Economic Development, United States Department of the Interior, to Jim Shore, General Counsel for the Seminole Tribe of Florida, and carbon copied to Ms. Raquel Rodriguez, General Counsel to the Governor of Florida, September 26, 2006.

<sup>81</sup> Meister, Alan, *Indian Gaming Industry Report*, 2006-2007 Edition, Newton: Casino City Press.

<sup>82</sup> NIGC.

<sup>83</sup> NIGC.

<sup>84</sup> Tribal-State Compact, For the Control of Class III Video Games of Chance on the White Earth Band of Chippewa Reservation in Minnesota, effective October 3, 1991.

<sup>85</sup> Based upon a discussion with NIGC staff.



regulation changes went into effect, the White Earth Band would have no choice but to replace current Class II machines with compliant Class II machines.

### **Montana**

In 2005, six Montana tribes operated a total of 868 gaming machines in 26 facilities.<sup>86</sup> Of these machines, 98 (11 percent) were Class II.<sup>87</sup> Currently, there are 627 Class II machines in operation.<sup>88</sup> They are operated in a total of seven facilities, including at least one facility for each gaming tribe in the state.

The gaming compacts in Montana are very restrictive. The compacts not only cap the number of Class III machines that can be operated per facility,<sup>89</sup> but they also restrict the type of allowable machines (i.e., only video bingo, video keno, and video poker) and their operation (e.g., payouts and hours of operations).<sup>90</sup> In fact, I understand that Class III machines in Montana may be on par with or possibly even inferior to current Class II machines.<sup>91</sup>

Given the quality of Class III gaming in Montana, tribes are using Class II machines to supplement Class III machines. And if the proposed changes to Class II regulations went into effect, the tribes would have to switch to compliant Class II machines or else the inferior Class III machines, if they have not met their machine caps yet.

### **Nebraska**

In 2005, three tribes operated a combined total of 350 Class II machines in three facilities.<sup>92</sup> Currently, there are 297 Class II machines in four facilities.<sup>93</sup> Approximately 54 percent of these machines are located within one of the four facilities. The remainder of the Class II devices are operated in three relatively small facilities.

The tribes in Nebraska serve relatively small areas with competition in adjacent states, namely in Iowa and South Dakota, which both offer Class III gaming. While the tribes have wanted to operate Class III gaming for some time, they have been unable to get the State of Nebraska to negotiate gaming compacts. Secretarial Procedures were requested

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<sup>86</sup> Meister, Alan, *Indian Gaming Industry Report*, 2006-2007 Edition, Newton: Casino City Press.

<sup>87</sup> NIGC.

<sup>88</sup> NIGC.

<sup>89</sup> Montana Department of Justice, Gambling Control Division website, accessed September 25, 2006 (<http://doj.mt.gov/gaming/tribalgamingcompacts.asp>).

<sup>90</sup> Agreement Between the Assiniboine and Sioux Tribes of the Fort Peck Reservation and the State of Montana, July 1, 1992; Interim Agreement Between the Blackfeet Indian Tribe of the Blackfeet Reservation and the State of Montana, October 26, 1996; Amendment to the Interim Compact Between the Chippewa Cree Tribe of the Rocky Boy Reservation and the State of Montana, November 21, 2005; Agreement Between the Confederated Salish and Kootenai Tribes of the Flathead Nation and the State of Montana, October 12, 2001; Agreement Between the Crow Indian Tribe and the State of Montana, June 12, 1998; and Agreement Between the Northern Cheyenne Tribe and the State of Montana, July 19, 2002.

<sup>91</sup> NIGC staff.

<sup>92</sup> Meister, Alan, *Indian Gaming Industry Report*, 2006-2007 Edition, Newton: Casino City Press.

<sup>93</sup> NIGC.

approximately 10 years ago in order to operate Class III gaming.<sup>94</sup> But this request has not gone anywhere yet.

Therefore, if the NIGC's proposed Class II regulation changes are enacted, Nebraska tribes would have no choice but to adopt compliant Class II machines.

### *New York*

In 2005, four tribes operated a total of 9,913 gaming machines in nine facilities in New York.<sup>95</sup> Of this total, 1,306 (13 percent) were Class II.<sup>96</sup> Currently, there are 1,258 Class II machines.<sup>97</sup> These Class II machines are operated at three gaming facilities.

All three of the facilities are restricted to Class II gaming as they are not covered by gaming compacts. And if the NIGC's proposed Class II regulation changes go into effect, these facilities would have no choice but to replace current machines with compliant machines, which would leave the facilities worse off.<sup>98</sup>

### *Oklahoma*

Traditionally, Oklahoma tribes have offered *only* Class II gaming, including bingo and pull-tab machines. However, this changed in 2005. Pursuant to gaming compacts, most tribes have begun offering some Class III gaming machines and non-house banked card games.<sup>99</sup> In 2005, 27 tribes operated a total of 31,831 gaming machines in 87 gaming facilities.<sup>100</sup> Of these machines, 3,230 (about 10 percent) were Class III and 28,601 were Class II.<sup>101</sup> Thus, as of the end of calendar year 2005, the vast majority of gaming machines were still Class II.

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<sup>94</sup> Discussion with tribal representative.

<sup>95</sup> Meister, Alan, *Indian Gaming Industry Report*, 2006-2007 Edition, Newton: Casino City Press.

<sup>96</sup> NIGC.

<sup>97</sup> NIGC.

<sup>98</sup> The Mohawk Bingo Palace operated by the St. Regis Mohawk Tribe competes with the tribe's own Class III gaming facility, as well as Canadian casinos. The Class II facility operated by the Seneca Nation in Salamanca, New York faces direct competition from the tribe's own Class III gaming facility in Salamanca. The other Class II facility operated by the Seneca Nation in Irving, New York faces little competition. Source: NIGC staff.

<sup>99</sup> These Class III machines are often referred to as "compact machines" and include electronic bonanza-style bingo, amusement/skill games (e.g., video poker), and instant bingo. Source: Tribal-State Compacts between Oklahoma tribes and the State of Oklahoma; Multimedia Games, Inc., Form 10-K, For the Fiscal Year Ended September 30, 2005.

<sup>100</sup> Meister, Alan, *Indian Gaming Industry Report*, 2006-2007 Edition, Newton: Casino City Press; NIGC. Note that in the *Indian Gaming Industry Report*, all gaming facilities operated by Indian tribes were included in tribe, facility, and machine counts. However, because the NIGC is only charged with regulating gaming activities on Indian lands, as defined by IGRA, only gaming facilities that fall under this definition are included in the summary statistics and analyses in this report. There were three facilities included in the *Indian Gaming Industry Report* that were not considered to be Indian gaming by the NIGC. All of them were located in Oklahoma (so the *Indian Gaming Industry Report* shows 90 facilities instead of 87). Two of the three facilities excluded from this report are racetrack casinos ("racinos") operated by tribes under state gaming regulations (Will Rogers Downs operated by the Cherokee Nation and Blue Ribbon Downs operated by the Choctaw Nation). The third facility excluded from this report is the Keetoowah Casino, which is operated by the United Keetoowah Band of Cherokee Indians. According to the NIGC General Counsel, this facility is not considered to be on "Indian lands." In addition, Appendix E excludes one additional facility that did not offer Class II machines in 2005. This was Wildfire Gaming operated by the Chickasaw Nation. It only offered off-track betting.

<sup>101</sup> State of Oklahoma, Office of State Finance for Class III counts.

However, the shift to Class III machines has steadily continued. As of the end of August 2006, the number of Class III devices nearly tripled to 9,033.<sup>102</sup> In fact, some larger, successful facilities now have a large contingency of Class III machines (almost half of all gaming machines).<sup>103</sup> In addition, the success of Class III devices has improved significantly. When first introduced, Class III devices did not perform as well as Class II devices. In 2005, revenue per Class II machine per day was approximately \$121.<sup>104</sup> Meanwhile, the revenue per Class III machine per day was approximately \$63 in March 2005, \$83 in June 2005, \$81 in September 2005, and \$101 in December 2005.<sup>105</sup> However, this rising trend has continued and, as of August 2006, revenue per Class III machine per day is equivalent to that of Class II machines.<sup>106</sup> And note that in the absence of Class II machines, where Class III machines are the only electronic devices in play, Class III machines are likely to perform even better than they do currently. Furthermore, based upon their rising performance, Class III machines are expected to outperform Class II machines in the long run.

Given the above, if the proposed Class II regulation changes are enacted, tribes would likely shift to all Class III machines. However, as discussed in the Increased Costs section of the Chapter 3, the tribes would have to incur additional revenue-sharing costs in order to operate more Class III machines. Per their gaming compacts, tribes must pay four to six percent of Class III machine net win to the State.<sup>107</sup>

### ***Oregon***

In 2005, two Oregon tribes operated a total of 124 Class II machines in two facilities.<sup>108</sup> These machines were only a small fraction of the total number of gaming machines operated in Indian gaming facilities in the state. Of the 6,055 machines in operation, Class II machines only represented two percent. In both facilities operating Class II machines, they were used to supplement Class III machines, which were subject to a cap per tribe. However, at some point, the tribes removed all Class II machines and they now only have Class III machines.

If the proposed changes to Class II regulations were enacted, there is no immediate revenue decrease in Oregon because there are no Class II machines remaining. However, even in the long run, Oregon gaming tribes with existing compacts would not necessarily need to switch to compliant Class II machines. As was the case in California, a viable alternative to compliant Class II machines is an increase in the number of Class III machines by

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<sup>102</sup> Source: State of Oklahoma, Office of State Finance. Meanwhile, the number of Class II machines has currently declined to 28,101. Source: NIGC.

<sup>103</sup> Based upon discussions with industry participants.

<sup>104</sup> Analysis Group estimate based on data underlying the *Indian Gaming Industry Report*.

<sup>105</sup> Analysis Group estimates based upon data from the State of Oklahoma, Office of State Finance.

<sup>106</sup> Analysis Group estimates based upon data from the State of Oklahoma, Office of State Finance. Note that Class II data are only available for 2005, while Class III data are for 2006. These are the most current data available. However, this finding was confirmed in discussions with industry participants.

<sup>107</sup> For Class III machines, revenue sharing payments are tiered from four percent to six percent of adjusted gross revenue. Source: Tribal-State Compacts between Oklahoma tribes and the State of Oklahoma.

<sup>108</sup> NIGC, as of October 2005.

renegotiating compacts. By way of example, one of the two tribes that had been supplementing its Class III machines with Class II machines renegotiated its compact in July 2006 to allow for more Class III machines.<sup>109</sup>

### ***South Dakota***

In 2005, the nine South Dakota tribes operated a total of 1,983 gaming machines in 12 facilities.<sup>110</sup> These facilities primarily offer Class III gaming. However, two of them also offer Class II machines to supplement Class III machines, which have a cap. Of the total number of gaming devices at Indian gaming facilities, only 40 (two percent) were Class II.<sup>111</sup> Currently, there are 64.<sup>112</sup>

Given the caps on Class III machines, the two facilities above have been using Class II machines to supplement Class III machines. I understand that the tribes are interested in possibly renegotiating their compacts in order to increase these caps. However, the state has refused to renegotiate. Some claim that the state will not renegotiate because it doesn't want to hurt its video lottery revenue.<sup>113</sup> Therefore, if the proposed changes to Class II regulations went into effect, the tribes would have to switch to compliant Class II machines to supplement their Class III gaming.

### ***Texas***

There is only one tribe, the Kickapoo Traditional Tribe of Texas ("Kickapoo Tribe"), operating an Indian gaming facility in Texas.<sup>114</sup> This Class II-only facility operated 1,000 Class II machines in 2005.<sup>115</sup> Currently, it houses 1,325 Class II machines.<sup>116</sup> Despite its very rural location along the border of Mexico, it has done well and continued to increase its capacity. However, increasing competition has come from commercial gaming facilities with gaming machines that pay out low-stakes, non-cash prizes rather than cash.<sup>117</sup> The Kickapoo Tribe has noted that it would be at a severe competitive disadvantage if the proposed Class II regulation changes went into effect and forced them to shift to inferior machines.<sup>118</sup>

In order remain competitive, the Tribe would like to operate Class III gaming. However, the State of Texas refuses to enter into a gaming compact with the Tribe. Therefore, the Tribe

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<sup>109</sup> Notice of Approved Tribal-State Class III Gaming Amendment, Confederated Tribes of Grand Ronde and the State of Oregon, *Federal Register* 71(135), July 14, 2006.

<sup>110</sup> Meister, Alan, *Indian Gaming Industry Report*, 2006-2007 Edition, Newton: Casino City Press.

<sup>111</sup> NIGC.

<sup>112</sup> NIGC.

<sup>113</sup> Discussions with industry participants.

<sup>114</sup> Meister, Alan, *Indian Gaming Industry Report*, 2006-2007 Edition, Newton: Casino City Press.

<sup>115</sup> Meister, Alan, *Indian Gaming Industry Report*, 2006-2007 Edition, Newton: Casino City Press.

<sup>116</sup> NIGC.

<sup>117</sup> NIGC staff and tribal representative.

<sup>118</sup> These gaming devices at commercial gaming facilities currently remain under legal challenge.

has requested Secretarial Procedures. At this time, no significant progress has been made though.

Given the current situation, if the NIGC's proposed Class II regulation changes are enacted, the Kickapoo Tribe would have no choice but to replace existing Class II machines with inferior compliant devices.

### ***Washington***

In 2005, there were 22 tribes primarily operating Class III gaming in 33 gaming facilities in Washington.<sup>119</sup> The total statewide machine count at these facilities was 18,294,<sup>120</sup> with 618 being Class II machines (three percent).<sup>121</sup> As in the case of other Class III states, tribes are supplementing their Class III gaming with Class II machines. Currently, Class II machines have become fairly widespread: 16 tribes operate 1,721 Class II machines in 17 tribal facilities.<sup>122</sup> This growth is due in large part to the fact that gaming compacts limit the maximum number of Class III devices and gaming facilities a tribe can have.<sup>123</sup> Tribes also have to pay a small amount of revenue sharing on Class III lottery devices.

Given these current limitations, tribes do not really have any viable alternatives to Class II machines at this time. Furthermore, at this point, there have been no major movements towards renegotiating compacts for more Class III machines in Washington. Thus, if the proposed changes to Class II regulations went into effect, the tribes would have to switch to compliant Class II machines to supplement their Class III gaming.

### ***Wisconsin***

In 2005, 11 Wisconsin tribes operated a total of 15,454 gaming machines in 28 facilities.<sup>124</sup> Of this total, 361 (two percent) were Class II.<sup>125</sup> All of these Class II machines are operated in one gaming facility, DeJoie Bingo and Entertainment operated by the Ho-Chunk Nation. Per an amendment to its compact, the Nation can only operate Class III gaming at this facility if the governor of Wisconsin is given authorization by voter referendum or passage of a local city council resolution.<sup>126</sup>

Given that the DeJoie facility did not get the required approval, it remains a Class II-only facility. Therefore, if the NIGC's proposed Class II regulation changes are enacted, the

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<sup>119</sup> Meister, Alan, *Indian Gaming Industry Report*, 2006-2007 Edition, Newton: Casino City Press.

<sup>120</sup> Meister, Alan, *Indian Gaming Industry Report*, 2006-2007 Edition, Newton: Casino City Press.

<sup>121</sup> NIGC.

<sup>122</sup> NIGC.

<sup>123</sup> The number of machines and facilities varies per tribe. Source: Tribal-State Compact for Class III Games Between tribes and the State of Washington.

<sup>124</sup> Meister, Alan, *Indian Gaming Industry Report*, 2006-2007 Edition, Newton: Casino City Press.

<sup>125</sup> NIGC.

<sup>126</sup> Second Amendment to the Wisconsin Winnebago Tribe, Now Known as the Ho-Chunk Nation, and the State of Wisconsin Gaming Compact of 1992.

Nation would have no choice but to replace existing Class II machines with compliant devices.

### **Wyoming**

The Northern Arapaho Tribe is currently the only gaming tribe in Wyoming.<sup>127,128</sup> In 2005, it operated one gaming facility with 428 machines.<sup>129</sup> It was a Class II-only facility up until September 2005 when Secretarial Procedures were approved by the Department of the Interior. This approval allowed the Tribe to operate Class III gaming without entering into a gaming compact with the State of Wyoming, which had refused to negotiate with the Tribe. While the Tribe has been introducing Class III machines into its facility, there are currently 120 Class II devices still in operation, including some at a smaller second facility recently opened by the tribe in 2006.<sup>130</sup>

If the NIGC's proposed Class II regulation changes are enacted, the Tribe could just replace all of its Class II machines with Class III devices. In fact, that is what the Tribe may likely do anyway given that it can have an unlimited number of Class III devices.

### **Methodology**

In order to measure the aggregate decrease in Class II gaming revenue under the proposed regulation changes, I calculate the difference between actual gaming revenue generated by Class II gaming machines under the current regulations and estimated gaming revenue generated by Class II gaming machines under the proposed regulations. Actual and estimated Class II machine revenue are measured for 2005, the last year for which tribal financial information is available from the NIGC.

The first part of the lost gaming revenue calculation, actual Class II machine revenue under the current regulations, is simply a summation of all Class II machine revenue at Indian gaming facilities in 2005. For comparison sake, I divide by the actual number of Class II machines and then divide again by 365 days to compute a commonly-used industry metric, revenue per machine per day.

The second part of the lost gaming revenue calculation, estimated Class II machine revenue under the proposed regulations, is calculated by multiplying the expected revenue per Class II machine by the expected number of Class II machines. Because the proposed regulation changes reflect a hypothetical situation that is very different than the actual world, expected revenue per Class II machine and expected number of Class II machines must be estimated.

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<sup>127</sup> Meister, Alan, *Indian Gaming Industry Report*, 2006-2007 Edition, Newton: Casino City Press.

<sup>128</sup> The Eastern Shoshone Tribe, which shares a reservation with the Northern Arapaho Tribe, will be able to offer Class III gaming in the near future now that it has a gaming compact. Following the approval of Secretarial Procedures for the Northern Arapaho Tribe, the State of Wyoming entered into a gaming compact with the Eastern Shoshone Tribe.

<sup>129</sup> Meister, Alan, *Indian Gaming Industry Report*, 2006-2007 Edition, Newton: Casino City Press.

<sup>130</sup> NIGC.



For the expected revenue per Class II machine, I undertook a comparables analysis. In this effort, I sought out a type of machine and/or time period that would be *most* similar to the hypothetical situation contemplated by the proposed Class II regulation changes. I considered various types of Class II machines that have been operated since the emergence of the industry following the passage of IGRA in 1988. It is my understanding that no past or current Class II device would qualify as Class II under the proposed regulation changes.<sup>131</sup> However, based upon independent discussions with various industry participants, I concluded that the one type of machine that most closely resembles the requirements of the proposed regulation changes was MegaMania. When MegaMania was introduced in 1995 by Multimedia Games, it was the first interactive bingo game played on gaming terminals within a single gaming facility, and later across multiple gaming facilities via a nationwide, broadband telecommunications network.<sup>132</sup> As shown in Table 3, MegaMania machines had almost all of the key features required by the proposed regulation changes for bingo, lotto, or other games similar to bingo.<sup>133</sup> However, it was slower than that which would be allowed under the proposed regulation changes.

In light of the above similarities, I assumed that Class II machines under the proposed regulatory changes would perform similar to MegaMania. Specifically, revenue per machine per day for compliant Class II machines was assumed to be equal to that of MegaMania, after adjusting for inflation. MegaMania's average revenue per machine per day from 1997 through 2001 was approximately \$58.<sup>134</sup> After adjusting for inflation, the average revenue per machine per day for MegaMania equates to \$67.<sup>135</sup> Thus, given that the nationwide average revenue per Class II machine per day was \$156 in 2005,<sup>136</sup> the expected 2005 revenue per Class II machine per day under the proposed regulatory changes would be 57 percent lower than the actual 2005 revenue per Class II machine.<sup>137</sup>

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<sup>131</sup> Most Class II machines would fail to meet more than one requirement. However, *all* machines would at least fail to meet the requirement that technological aids prominently display using two inch letters a message that it is a game of bingo or game similar to bingo.

<sup>132</sup> Multimedia Games, Inc., Form 10-KSB/10K, For the Fiscal Years Ended September 30, 1996 and 2005.

<sup>133</sup> Multimedia Games, Inc., Form 10-KSB/10Ks, For the Fiscal Year Ended September 30, 1996, 1999, and 2005; discussions with industry participants.

<sup>134</sup> MegaMania generated revenue of \$20.5 million from 950 machines in fiscal year 1997, \$49.5 million from 2,140 machines in fiscal year 1998, \$73.1 million from 3,600 machines in fiscal year 1999, \$79.2 million from 3,870 machines in fiscal year 2000, and \$73.6 million from 3,432 machines in fiscal year 2001. Thus, MegaMania's weighted average revenue per machine per day =  $\Sigma (\text{MegaMania revenue}) / \Sigma (\text{Number of MegaMania machine}) / \text{Number of Days in the Year} = (\$20.5 \text{ million} + \$49.5 \text{ million} + \$73.1 \text{ million} + \$79.2 \text{ million} + \$73.6 \text{ million}) / (950 + 2,140 + 3,600 + 3,870 + 3,432) / 365 = \$57.94$ . Although MegaMania machines were in the market in fiscal year 1996, that year was excluded from the analysis because it was a startup year. Years following 2001 were also excluded because 2001 was the last year before Multimedia's next generation of Class II machines, MegaNanza, began to take off and replace MegaMania. In addition, 2001 was the first year that significant competition entered into the Class II gaming machine market against Multimedia. Sources: Multimedia Games, Inc., Form 10-KSBs/10Ks, For the Fiscal Years Ended September 30, 1997, 1998, 1999, 2000, and 2001; discussions with industry participants.

<sup>135</sup> Actual revenue per machine per day values (i.e., the year in which they occurred) were converted to constant 2005 values using the Consumer Price Index (CPI-U). Source: U.S. Department of Labor Statistics, Bureau of Labor Statistics. Thus, MegaMania's weighted average revenue per machine per day =  $(\$25.0 \text{ million} + \$59.3 \text{ million} + \$85.7 \text{ million} + \$89.8 \text{ million} + \$81.2 \text{ million}) / (950 + 2,140 + 3,600 + 3,870 + 3,432) / 365 = \$66.76$ .

<sup>136</sup> Actual 2005 revenue per Class II machine is based upon an analysis of tribal financial data provided by the NIGC.

<sup>137</sup> Decrease in revenue per Class II machine =  $(\text{MegaMania's revenue per machine} - \text{actual 2005 revenue per Class II machine}) / \text{actual 2005 revenue per Class II machine} = (\$67 - \$156) / \$156 = -57.1\%$ .

<b>Table 3. Comparison of MegaMania Features to Proposed Class II Regulation Changes</b>	
<b>Game Features per the Proposed Class II Regulation Changes<sup>1</sup></b>	<b>MegaMania</b>
Players must compete against one another.	✓
A game can begin with a minimum of two players if six players do not enter a game within two seconds after the first player enters. <sup>2</sup>	✓
Bingo cards must be used; however, those cards may be electronic.	✓
Bingo cards must be provided to players before numbers are drawn.	✓
Each card played in a game must have an equal chance of obtaining any winning pattern.	✓
The game must prominently display using two inch letters a message that it is a game of bingo or game similar to bingo.	
One-half of the screen must display the bingo game at all times. <sup>3</sup>	✓
Game results may be presented in alternative technologic displays (e.g., game theme graphics, spinning reels, or other imagery) as long as the game results on the electronic bingo card are always shown. <sup>4</sup>	✓
Numbers must be randomly drawn (without replacement) in real time or very near real time to the actual play of the game.	✓
Different entry wagers are permitted.	✓
The prizes in the game may be increased or progressive prizes offered based upon a higher entry wager.	✓
All prizes must be based upon achieving pre-designated winning patterns common for all players.	✓
An "ante-up" format is permitted.	✓
An "auto-daub" feature is not permitted; thus, players must take overt action to daub numbers at least one time in each round after numbers are drawn.	✓
The minimum time for players to daub numbers must be two seconds. <sup>5</sup>	✓
A game is won by the first person covering the pre-designated game-winning pattern.	✓
There must be at least two releases of numbers before a game-winning pattern is created.	✓
A game-winning prize must be awarded in every game.	✓
Gaming-winning prizes must be at least 20 percent of the amount wagered and have a minimum value of one cent. <sup>6</sup>	✓
Prizes must be based on events directly related to the game.	✓
All prizes must be fixed in amount or established by formula and be disclosed to all players in the game.	✓
The use of a payable for determining prizes is permitted.	✓
Pre-designated interim prizes may be offered but all players in a game must be competing for the same set of prizes.	✓
"Stand-alone progressives" and "mystery jackpots" are not permitted.	✓
A "gamble feature" is not permitted.	✓
"Residual credit removal" is not permitted.	✓
"Free games" are permitted as a marketing tool as long as all players participating in the game that led to the free games receive the same number of free games.	✓
<p>Notes:</p> <ol style="list-style-type: none"> <li>1. Game features are set forth in the proposed Class II regulation changes for bingo, lotto, and other games similar to bingo.</li> <li>2. MegaMania could not begin with less than 12 players.</li> <li>3. In MegaMania, the bingo card took up up 1/3 to 1/4 of the screen; the rest was the list of possible numbers.</li> <li>4. MegaMania had no alternative technological displays; the bingo card and the list of possible numbers took up the entire screen.</li> <li>5. MegaMania had a 15-second time delay between ball drops.</li> <li>6. MegaMania's game-winning prizes were approximately 85% of the amount wagered.</li> </ol> <p>Source:</p> <p>Proposed Rule, 25 CFR Part 502, Definition for Electronic or Electromechanical Facsimile, <i>Federal Register</i> 71 (101), May 25, 2006; Proposed Rule, 25 CFR Part 502 and 546, Classification Standards, Class II Gaming, Bingo, Lotto, et al., <i>Federal Register</i> 71 (101), May 25, 2006; Multimedia Games, Inc., Form 10-KSB, For the Fiscal Year Ended September 30, 1996; Multimedia Games, Inc., Form 10-K, For the Fiscal Year Ended September 30, 1999; Multimedia Games, Inc., Form 10-K, For the Fiscal Year Ended September 30, 2005; discussions with industry participants.</p>	



This estimated decrease in Class II machine revenue (57 percent) is corroborated by an independent simulation analysis recently conducted for the NIGC by BMM North America, Inc., a global gaming industry test lab.<sup>138,139</sup> In the analysis, a bingo simulator was developed to mimic Class II machines. Using that simulator, BMM measured the performance of a Class II machine that would be compliant with the proposed regulation changes and compared it to the performance of two types of existing Class II machines: 1) a Class II machine that is compliant with existing regulations; and 2) a one-touch Class II machine, which is not considered by the NIGC to be compliant with existing regulations.<sup>140</sup>

The results of BMM's simulations are presented in Table 4. In the comparison to Class II machines compliant with the existing regulations, the simulations found that the number of games played and coin in for a Class II machine compliant with the proposed regulations would be 37 to 43 percent lower.<sup>141</sup> In the comparison to one-touch Class II machines, the simulations found that the number of games played and coin in for a Class II machine compliant with the proposed regulations would be 56 to 60 percent lower.

Table 4. Expected Decrease in Performance of Compliant Class II Machines						
BMM Simulation Results						
	Performance (Rate Per Minute) <sup>1</sup>					
	1st Simulation <sup>2</sup>		2nd Simulation <sup>3</sup>		3rd Simulation <sup>4</sup>	
	Games	Coin In	Games	Coin In	Games	Coin In
Class II Machines Compliant with Proposed Regulations	5.23	5,777.22	5.72	9,574.60	5.53	9,101.82
Class II Machines Compliant with Existing Regulations	9.14	9,972.22	9.13	15,245.14	9.12	14,885.96
Percentage Decrease	42.78%	42.07%	37.35%	37.20%	39.36%	38.86%
Class II Machines Compliant with Proposed Regulations	5.23	5,777.22	5.72	9,574.60	5.53	9,101.82
One-Touch Class II Machines	13.16	14,371.67	13.13	22,022.65	13.13	21,551.46
Percentage Decrease	60.26%	59.80%	56.44%	56.52%	57.88%	57.77%
Weighted Average Percentage Decrease <sup>5</sup>	51.90%	51.32%	47.31%	47.29%	49.03%	48.73%

Source: BMM North America, Inc., Comparison Analysis of Various Class II Configuration Options, October 26, 2006; NIGC.

Notes:

1. The duration of each simulation was 12 hours.
2. Simulation 1 is based upon the assumption that there are only 2 active players.
3. Simulation 2 is based upon the assumption that there are always 6 active players.
4. Simulation 3 is based upon the assumption that a random number of players between 2 and 12 will participate in each game.
5. The Weighted Average Percentage Decrease Represents the actual mix of existing machines. Thus, because approximately 47.8% (23,363/48,912) of all existing machines are Class II Machines Compliant with Existing Regulations and 52.2% (25,549/48,912) are One-Touch Class II Machines, the Weighted Average Percentage Decrease is calculated as (.478)x(Percentage Decrease for Class II Machines Compliant with Existing Regulations)+(.522)x(Percentage Decrease for One-Touch Class II Machines). The mix of existing machines was provided by the NIGC (see Scenario 3 in the Results section).

In order to reflect the actual mix of these two types of Class II machines across the country, I used a weighted average of the aforementioned results, whereby the weights for each type

<sup>138</sup> In fact, the results of BMM's simulation analysis were not made available to me until after I had already completed my analysis.

<sup>139</sup> Source: BMM North America, Inc., Comparison Analysis of Various Class II Configuration Options, October 10, 2006.

<sup>140</sup> For the purposes of this report, the NIGC considered all two-touch and three-touch Class II machines to be compliant with existing regulations.

<sup>141</sup> All simulation results were derived by varying different parameters and features of the games. Coin in was defined as the number of coins handled.

were based upon their percentage of the total number of Class II machines in operation. As shown in Table 4, the weighted average of the simulation results found that the number of games played and coin in for a compliant Class II machine would be 47 to 52 percent lower than those of existing Class II machines.<sup>142</sup>

For the expected 2005 number of machines under the proposed regulation changes, it is likely that Indian gaming facilities would initially modify or replace all existing Class II machines in order to be compliant with the proposed regulation changes.<sup>143</sup> Thus, the expected 2005 number of machines would remain at the actual 2005 level. For reference, Appendix E sets forth the number of Class II machines by state in 2005. Given the availability of floor space in the absence of existing Class II machines and the uncertainty regarding the viability of compliant Class II machines, this would be a reasonable starting point for a gaming facility. However, if the compliant Class II machines are sufficiently less appealing to patrons such that there is not sufficient demand for the existing number of machines, then a decrease might be in order. From an economic perspective, gaming facilities would only remove a machine when the marginal cost exceeds the marginal benefit.

## **Results**

Using the methodology set forth above, lost gaming revenue is calculated for three scenarios. These scenarios vary solely based upon the set of gaming facilities that are included:

- Scenario 1: All gaming facilities operating Class II machines.
- Scenario 2: All gaming facilities operating Class II machines without a viable alternative.
- Scenario 3: All gaming facilities operating Class II machines without a viable alternative *and* which are not currently operating “illegal” Class II machines, as defined by the NIGC (see below).

For each scenario, I calculate lost gaming revenue using the expected 57 percent decrease in revenue per Class II machine per day. In addition, a sensitivity analysis was also conducted in order to test how lost gaming revenue varies given different percentage decreases in revenue per machine per day. For exposition purposes, I utilized percentage decreases of 25%, 50%, and 75%.

Note that all actual 2005 market statistics (e.g., actual 2005 Class II machine revenue, actual 2005 number of Class II machines, and revenue per Class II machine per day) were

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<sup>142</sup> The determination of which Class II machines were and were not compliant with existing regulations and was made by the NIGC as noted in Scenario 3 of the Results section below. Note that the worst case situation in terms of a percentage decrease was assuming all Class II devices were one-touch machines. As noted above, this situation yielded 56 to 60 percent decreases in the number of games and coin in for compliant machines.

<sup>143</sup> Based upon discussions with various casino operations personnel.

recalculated for each scenario based upon the set of gaming facilities included in that scenario.

Scenario 1 assumes that *all* gaming facilities operating Class II machines would suffer a decrease in gaming revenue as a result of the enactment of the proposed Class II regulation changes. See Appendix D for all gaming facilities with Class II machines at the end of 2005. In my expert opinion, this scenario is not likely to be an accurate reflection of what would happen under the proposed regulation changes because some tribes have viable alternatives to compliant Class II machines. I present Scenario 1 merely as a starting point for Scenarios 2 and 3.

As shown in Table 5, for the base model in Scenario 1, revenue per Class II machine per day was \$156. Given that there were 45,389 Class II machines, this equates to actual 2005 Class II machine revenue of \$2.589 billion. As discussed above, it is expected that revenue per Class II machine would decrease 57 percent under the proposed regulation changes. This decrease would yield an average revenue per Class II machine per day of \$67. Applying this figure to the 45,389 Class II machines over 365 days yields expected 2005 Class II machine revenue of \$1.106 billion. Therefore, lost Class II machine revenue is the difference between actual 2005 Class II machine revenue (\$2.589 billion) and expected 2005 Class II machine revenue (\$1.106 billion), which is \$1.483 billion.

<b>Table 5. Lost Class II Machine Revenue Scenario 1</b>				
	<b>Base Model</b>	<b>Sensitivity Analysis <sup>4</sup></b>		
<b>Percentage Decrease</b>	<b>57%</b>	<b>25%</b>	<b>50%</b>	<b>75%</b>
<b>Actual <sup>1</sup></b>				
Revenue/Class II Machine/Day	\$156	\$156	\$156	\$156
Number of Class II Machines	45,389	45,389	45,389	45,389
Days per Year	365	365	365	365
<b>Class II Machine Revenue (\$ Millions)</b>	<b>\$2,588.9</b>	<b>\$2,588.9</b>	<b>\$2,588.9</b>	<b>\$2,588.9</b>
<b>Percentage Decrease <sup>2</sup></b>				
Revenue/Class II Machine/Day	57%	25%	50%	75%
<b>Under Class II Regulation Changes <sup>3</sup></b>				
Revenue/Class II Machine/Day	\$67	\$117	\$78	\$39
Number of Class II Machines	45,389	45,389	45,389	45,389
Days per Year	365	365	365	365
<b>Class II Machine Revenue (\$ Millions)</b>	<b>\$1,106.0</b>	<b>\$1,941.7</b>	<b>\$1,294.5</b>	<b>\$647.2</b>
<b>Lost Class II Machine Revenue (\$ Millions)</b>	<b>\$1,482.9</b>	<b>\$647.2</b>	<b>\$1,294.5</b>	<b>\$1,941.7</b>
<b>Notes:</b> 1. Actual values are for 2005, the last year for which data are available. 2. In the Base Model, Revenue/Class II Machine/Day under the proposed Class II regulation changes is expected to decrease 57%, which is the percentage decrease from the Actual 2005 Revenue/Class II Machine/Day to the inflation-adjusted average revenue per machine per day for MegaMania from 1997 to 2001. It is also expected that the number of Class II machines would remain at the Actual 2005 level. 3. For comparison to Actual values, it is assumed that the proposed changes to Class II regulations went into effect in 2005. 4. For exposition purposes, the Percentage Decrease in Revenue/Class II Machine/Day is set at 25%, 50%, and 75%.  <b>Source:</b> NIGC data and Analysis Group estimates.				

Scenario 2 deviates from the Scenario 1 in that it excludes gaming facilities that are not expected to experience a decrease in gaming revenue because tribes have viable alternatives to Class II machines (e.g., the introduction and/or addition of Class III machines). Per the state-by-state review set forth earlier in this section, the states excluded from this scenario are: Arizona; California (except for the Lytton Band's gaming facility); Florida; Oklahoma; Oregon; and Wyoming. Therefore, the states that remain in Scenario 2 are: Alabama; Alaska; California (only the Lytton Band's gaming facility); Minnesota; Montana; Nebraska; New York; South Dakota; Texas; Washington; and Wisconsin.

As shown in Table 6, Scenario 2 yields lost Class II machine revenue of \$142.7 million. The sensitivity analysis yields a range of \$62.3 million with the 25 percent revenue per Class II machine per day decrease to \$186.8 million with the 75 percent revenue per Class II machine per day decrease. In my opinion, the base model in Scenario 2 represents the best estimate of the aggregate gaming revenue loss with the proposed Class II regulation changes. However, as noted before, it is possible that marginally profitable gaming facilities (or gaming machines) may end up shutting down as a result of the proposed regulation changes. As a worst case situation, if all of the Class II machines in Scenario 2 were to be shut down (i.e., not replaced with compliant Class II machines), then the total lost Class II machine revenue would be equal to the actual Class II machine revenue of \$249.1 million.

<b>Table 6. Lost Class II Machine Revenue Scenario 2</b>				
	<b>Base Model</b>	<b>Sensitivity Analysis <sup>4</sup></b>		
<b>Percentage Decrease</b>	<b>57%</b>	<b>25%</b>	<b>50%</b>	<b>75%</b>
<b><u>Actual <sup>1</sup></u></b>				
Revenue/Class II Machine/Day	\$110	\$110	\$110	\$110
Number of Class II Machines	6,195	6,195	6,195	6,195
Days per Year	365	365	365	365
<b>Class II Machine Revenue (\$ Millions)</b>	<b>\$249.1</b>	<b>\$249.1</b>	<b>\$249.1</b>	<b>\$249.1</b>
<b><u>Percentage Decrease <sup>2</sup></u></b>				
Revenue/Class II Machine/Day	57%	25%	50%	75%
<b><u>Under Class II Regulation Changes <sup>3</sup></u></b>				
Revenue/Class II Machine/Day	\$47	\$83	\$55	\$28
Number of Class II Machines	6,195	6,195	6,195	6,195
Days per Year	365	365	365	365
<b>Class II Machine Revenue (\$ Millions)</b>	<b>\$106.4</b>	<b>\$186.8</b>	<b>\$124.5</b>	<b>\$62.3</b>
<b>Lost Class II Machine Revenue (\$ Millions)</b>	<b>\$142.7</b>	<b>\$62.3</b>	<b>\$124.5</b>	<b>\$186.8</b>
<b>Notes:</b> 1. Actual values are for 2005, the last year for which data are available. 2. In the Base Model, Revenue/Class II Machine/Day under the proposed Class II regulation changes is expected to decrease 57%, which is the percentage decrease from the Actual 2005 Revenue/Class II Machine/Day to the inflation-adjusted average revenue per machine per day for MegaMania from 1997 to 2001. It is also expected that the number of Class II machines would remain at the Actual 2005 level. 3. For comparison to Actual values, it is assumed that the proposed changes to Class II regulations went into effect in 2005. 4. For exposition purposes, the Percentage Decrease in Revenue/Class II Machine/Day is set at 25%, 50%, and 75%.  <b>Source:</b> NIGC data and Analysis Group estimates.				

Scenario 3, which was solely developed at the request of the NIGC and does not reflect my opinion, reflects the NIGC's view that some Class II gaming machines are "illegal" (i.e., they

fail to meet *existing* Class II classification standards and are thus Class III games) and therefore should not be included in the calculation of lost gaming revenue.<sup>144,145</sup> According to the NIGC, “illegal” Class II machines were being operated in the following states and are thus excluded from Scenario 3: Arizona; Florida; Montana; New York (in part); Oklahoma (in part); Oregon (in part); South Dakota; and Texas (in part). In total, 54 percent of all Class II machines in operation nationwide in 2005 were “illegal.” Some of the aforementioned states with illegal Class II machines, namely Arizona, Florida, Oklahoma, and Oregon, are already excluded from Scenario 2.<sup>146</sup> Thus, using Scenario 2 as a starting point, the following states were then excluded: Montana, New York (in part), South Dakota, and Texas (in part). This left the following states in Scenario 3: Alabama; Alaska; California (only the Lytton Band’s gaming facility); Minnesota; Nebraska; New York (in part); Texas (in part); Washington; and Wisconsin.

As shown in Table 7, Scenario 3 yields lost Class II machine revenue of \$115.2 million. The sensitivity analysis yields a range of \$50.3 million with the 25 percent Class II revenue per machine per day decrease to \$150.8 million with the 75 percent Class II revenue per machine per day decrease.

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<sup>144</sup> I have no opinion on the legality of existing Class II machines. However, it is my expert opinion that any decrease in Class II machine revenue, whether or not illegal, fundamentally has a negative economic impact on a gaming facility and its respective tribe because that revenue is used to pay employees, purchase goods and services, fund tribal government operations and programs, provide for the general welfare of tribal members, and promote tribal economic development. Aside from this theoretical issue, rather than excluding all illegal machines in their entirety, it may be more appropriate to only exclude the incremental benefits gained by using illegal machines as opposed to legal machines. However, sufficient data were not available in this regard.

<sup>145</sup> The NIGC considers gaming machines to be “illegal” if they do not comport with its game classification or advisory opinions issued by the Office of the General Counsel at the NIGC. For the purposes of this report, the NIGC considered all one-touch Class II machines to be illegal. The NIGC was only aware of whether *current* Class II machines were one-touch or not. However, the Scenario 3 analysis was based upon 2005 data. Therefore, it was assumed that the 2005 proportion of one-touch machines to total Class II machines for each facility was the same as the current proportion. For facilities that had Class II machines in 2005, but do not have them any longer (e.g., a couple of facilities in Arizona, Minnesota, and Oregon), the NIGC researched what the facilities were offering back in 2005.

<sup>146</sup> Note that Wyoming is not mentioned in the discussion of Scenario 3. It was already excluded from Scenario 2, and thus also from Scenario 3.

**Table 7. Lost Class II Machine Revenue  
Scenario 3**

<b>Percentage Decrease</b>	<b>Base Model</b>	<b>Sensitivity Analysis <sup>1</sup></b>		
	<b>57%</b>	<b>25%</b>	<b>50%</b>	<b>75%</b>
<b>Actual <sup>2</sup></b>				
Revenue/Class II Machine/Day <sup>3</sup>	\$111	\$111	\$111	\$111
Number of Class II Machines <sup>4</sup>	4,966	4,966	4,966	4,966
Days per Year	365	365	365	365
<b>Class II Machine Revenue (\$ Millions)</b>	<b>\$201.1</b>	<b>\$201.1</b>	<b>\$201.1</b>	<b>\$201.1</b>
<b>Percentage Decrease <sup>5</sup></b>				
Revenue/Class II Machine/Day	57%	25%	50%	75%
<b>Under Class II Regulation Changes <sup>6</sup></b>				
Revenue/Class II Machine/Day	\$47	\$83	\$55	\$28
Number of Class II Machines	4,966	4,966	4,966	4,966
Days per Year	365	365	365	365
<b>Class II Machine Revenue (\$ Millions)</b>	<b>\$85.9</b>	<b>\$150.8</b>	<b>\$100.5</b>	<b>\$50.3</b>
<b>Lost Class II Machine Revenue (\$ Millions)</b>	<b>\$115.2</b>	<b>\$50.3</b>	<b>\$100.5</b>	<b>\$150.8</b>
<b>Notes:</b> 1. For exposition purposes, the Percentage Decrease in Revenue/Class II Machine/Day is set at 25%, 50%, and 75%. 2. Actual values are for 2005, the last year for which data are available. 3. Revenue/Class II Machine/Day is based upon all facilities with legal Class II Machines. For details on NIGC's determination of legal machines, see the text on Scenario 3. 4. Number of Class II Machines is equal to the total number of legal machines. For details on NIGC's determination of legal machines, see the text on Scenario 3. 5. In the Base Model, Revenue/Class II Machine/Day under the proposed Class II regulation changes is expected to decrease 57%, which is the percentage decrease from the Actual 2005 Revenue/Class II Machine/Day to the inflation-adjusted average revenue per machine per day for MegaMania from 1997 to 2001. It is also expected that the number of Class II machines would remain at the Actual 2005 level. 6. For comparison to Actual values, it is assumed that the proposed changes to Class II regulations went into effect in 2005.				
<b>Source:</b> NIGC data and Analysis Group estimates.				

## Other Important Considerations

It should be reiterated that if the revenue loss to a gaming facility were large enough, it could put them out of business. Although such individualized outcomes cannot be predicted by the aggregate analysis in this report, it is a realistic possibility for some tribes given the magnitude of the expected lost revenue. And if lost revenue is significant enough to force a gaming facility to shut down, then lost gaming revenue would equal current gaming revenue of that facility. For this reason, estimated lost gaming revenue is likely to be conservative.



Lost gaming revenue is also likely to be conservative given that it is being measured for 2005 and the number of Class II machines has been and is expected to continue increasing. As of September 2006, there were approximately 5,104 (12 percent) more Class II machines in operation in Indian gaming facilities than the end of 2005.<sup>147</sup> These machines have not only increased at existing locations, but they have also appeared in more places across the country. There were 14 more tribes and 26 more gaming facilities with Class II machines as of September 2006.<sup>148</sup> Moreover, this aforementioned growth would be expected to continue in the absence of the proposed regulation changes.

If for illustration purposes it were assumed that new Class II machines in 2006, which total 2,751 for the tribes included in Scenario 2, were to perform at the same level as the 6,195 Class II machines being made compliant in Scenario 2, this would increase the total number of impacted machines to 8,946. Using this new total in place of the 6,195 in Table 6 would yield total lost Class II machine revenue of \$206.0 million in the base model. This is a 44 percent increase over the estimated amount in the base model through the end of 2005 only. However, there is greater uncertainty regarding this result because of the simplifying assumption that was made (i.e., that the average revenue per Class II machine for the new machines introduced in 2006 is equal to the average revenue per Class II machine for machines in 2005).

## **LOST NON-GAMING REVENUE**

If the enactment of the proposed Class II regulation changes results in a reduction in Class II machine revenue, there would likely be a reduction in non-gaming revenue, where non-gaming amenities exist.

### **Methodology**

In order to measure the decrease in non-gaming revenue, I took the ratio of Class II machine-related non-gaming revenue to Class II machine revenue (i.e., the amount of non-gaming revenue generated for each dollar of Class II machine revenue generated) and applied it to the previously estimated loss in gaming revenue.<sup>149</sup> As noted in Chapter 4, the ratio of non-gaming revenue to Class II machine revenue was calculated as the sum of non-gaming revenue divided by the sum of Class II machine revenue.

### **Results**

Using the methodology set forth above, lost non-gaming revenue is calculated for the three scenarios defined in the Lost Gaming Revenue analysis. For each scenario, I calculate lost

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<sup>147</sup> The percentage increase in Class II machines equals  $((5,104 + 43,866) - 43,866) / 43,866 = 11.6\%$ . Source for data: NIGC.

<sup>148</sup> The increases in tribes and gaming facilities are nationwide figures. Source: NIGC.

<sup>149</sup> As discussed in Chapter 4, the proportion of non-gaming revenue that was attributable to Class II machines was assumed to be proportional to the share of Class II machines in operation, where Class III machines were weighted one and one-half times more than Class II machines.

non-gaming revenue based upon the expected 57 percent decrease in revenue per Class II machine per day. In addition, a sensitivity analysis was also conducted in order to test how lost non-gaming revenue varies given different percentage decreases in revenue per Class II machine per day. For exposition purposes, I utilized percentage decreases of 25%, 50%, and 75%.

Note that all market statistics (e.g., the ratio of non-gaming revenue to Class II machine revenue) were recalculated for each scenario based upon the set of gaming facilities included.

As shown in Table 8, Scenario 2 yields lost non-gaming revenue of \$9.6 million, with a sensitivity analysis range of \$4.2 million to \$12.6 million. For Scenarios 1 and 3, the lost non-

<b>Table 8. Lost Non-Gaming Revenue (\$ Millions)</b>				
<b>Percentage Decrease</b>	<b>Base Model</b>	<b>Sensitivity Analysis <sup>2</sup></b>		
	<b>57%</b>	<b>25%</b>	<b>50%</b>	<b>75%</b>
<b><u>Scenario 1</u></b>				
Lost Class II Machine Revenue	\$1,482.9	\$647.2	\$1,294.5	\$1,941.7
Ratio of Non-Gaming to Gaming Revenue <sup>1</sup>	5.7%	5.7%	5.7%	5.7%
Lost Non-Gaming Revenue	\$84.4	\$36.8	\$73.6	\$110.4
<b><u>Scenario 2</u></b>				
Lost Class II Machine Revenue	\$142.7	\$62.3	\$124.5	\$186.8
Ratio of Non-Gaming to Gaming Revenue <sup>1</sup>	6.7%	6.7%	6.7%	6.7%
Lost Non-Gaming Revenue	<b>\$9.6</b>	\$4.2	\$8.4	\$12.6
<b><u>Scenario 3</u></b>				
Lost Class II Machine Revenue	\$115.2	\$50.3	\$100.5	\$150.8
Ratio of Non-Gaming to Gaming Revenue <sup>1</sup>	6.8%	6.8%	6.8%	6.8%
Lost Non-Gaming Revenue	\$7.8	\$3.4	\$6.8	\$10.2
<b>Notes:</b> 1. See Chapter 4 for further discussion on calculation of Ratio of Non-Gaming to Gaming Revenue. The Ratio varies by Scenario due to the set of gaming facilities included in each Scenario. 2. For exposition purposes, the Percentage Decrease in Revenue/Class II Machine/Day is set at 25%, 50%, and 75%.  <b>Source:</b> NIGC data and Analysis Group estimates.				

gaming revenue was \$84.4 million and \$7.8 million, respectively.

## LOST TRIBAL GOVERNMENT REVENUE

If the enactment of the proposed Class II regulation changes results in a reduction in Class II machine revenue, and non-gaming revenue as a result, there will be a reduction in the amount of tribal government revenue as well.

## **Methodology**

In order to measure the decrease in tribal government revenue, I took the ratio of Class II machine-related tribal government revenue to Class II machine revenue (i.e., the amount of tribal government revenue generated for each dollar of Class II machine-related revenue generated) and applied it to the previously estimated loss in Class II machine revenue and related non-gaming revenue.<sup>150,151</sup> As noted in Chapter 4, the ratio of tribal government revenue to Class II machine revenue was calculated as the sum of tribal government transfers divided by the sum of Class II machine revenue and related non-gaming revenue.

## **Results**

Using the methodology set forth above, lost tribal government revenue is calculated for the three scenarios defined in the Lost Gaming Revenue analysis. For each scenario, I calculate lost tribal government revenue based upon the expected 57 percent decrease in revenue per Class II machine per day. In addition, a sensitivity analysis was also conducted in order to test how lost tribal government revenue varies given different percentage decreases in revenue per Class II machine per day. For exposition purposes, I utilized percentage decreases of 25%, 50%, and 75%.

Note that all market statistics (e.g., the ratio of tribal government revenue to total Class II machine-related revenue) were recalculated for each scenario based upon the set of gaming facilities included.

As shown in Table 9, Scenario 2 yields lost tribal government revenue of \$17.4 million, with a sensitivity analysis range of \$7.6 million to \$22.7 million. For Scenarios 1 and 3, the lost tribal government revenue was \$337.5 million and \$14.0 million, respectively.

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<sup>150</sup> As discussed in Chapter 4, the proportion of tribal government transfers that were attributable to Class II machines was assumed to be proportional to the share of Class II machines in operation, where Class III machines were weighted one and one-half times more than Class II machines.

<sup>151</sup> Given the existence of significant fixed costs, it might be expected that the percentage decrease of tribal government revenue would be greater than that of gaming revenue. However, no data were publicly available in this regard.

**Table 9. Lost Tribal Government Revenue (\$ Millions)**

Percentage Decrease	Base Model	Sensitivity Analysis <sup>2</sup>		
	57%	25%	50%	75%
<b>Scenario 1</b>				
Lost Class II Machine Revenue	\$1,482.9	\$647.2	\$1,294.5	\$1,941.7
Lost Non-Gaming Revenue	\$84.4	\$36.8	\$73.6	\$110.4
Total Lost Casino Revenue	\$1,567.3	\$684.0	\$1,368.1	\$2,052.1
Ratio of Tribal Revenue to Total Casino Revenue <sup>1</sup>	21.5%	21.5%	21.5%	21.5%
Lost Tribal Government Revenue	\$337.5	\$147.3	\$294.6	\$441.9
<b>Scenario 2</b>				
Lost Class II Machine Revenue	\$142.7	\$62.3	\$124.5	\$186.8
Lost Non-Gaming Revenue	\$9.6	\$4.2	\$8.4	\$12.6
Total Lost Casino Revenue	\$152.3	\$66.5	\$132.9	\$199.4
Ratio of Tribal Revenue to Total Casino Revenue <sup>1</sup>	11.4%	11.4%	11.4%	11.4%
Lost Tribal Government Revenue	\$17.4	\$7.6	\$15.2	\$22.7
<b>Scenario 3</b>				
Lost Class II Machine Revenue	\$115.2	\$50.3	\$100.5	\$150.8
Lost Non-Gaming Revenue	\$7.8	\$3.4	\$6.8	\$10.2
Total Lost Casino Revenue	\$123.0	\$53.7	\$107.3	\$161.0
Ratio of Tribal Revenue to Total Casino Revenue <sup>1</sup>	11.4%	11.4%	11.4%	11.4%
Lost Tribal Government Revenue	\$14.0	\$6.1	\$12.2	\$18.4
<p>Notes:</p> <p>1. See Chapter 4 for further discussion on calculation of Ratio of Tribal Revenue to Total Revenue. The Ratio varies by Scenario due to the set of gaming facilities included in each Scenario.</p> <p>2. For exposition purposes, the Percentage Decrease in Revenue/Class II Machine/Day is set at 25%, 50%, and 75%.</p> <p>Source:</p> <p>NIGC data and Analysis Group estimates.</p>				

## INCREASED REVENUE-SHARING COSTS

If in response to the proposed regulation changes, tribes replace existing Class II machines with Class III machines (where possible), significant revenue-sharing costs may be incurred.

### Methodology

For the most part, it is difficult to anticipate revenue sharing costs, especially when expected Class III revenue is uncertain and there is no existing revenue sharing. Expected revenue is based on a variety of factors, including the types of machines installed, facility locations, and competition. Expected revenue sharing rates are derived through unique negotiations, may be based on a variety of factors, and will likely vary widely depending on the circumstances of each situation.

However, there is one state in which increased revenue sharing costs can be generally estimated. This is for Oklahoma, where revenue sharing is already agreed upon in existing gaming compacts. As noted in the state-by-state analysis earlier in this chapter, Oklahoma

tribes are likely to shift to Class III machines if the proposed regulation changes are enacted. Furthermore, based upon the most current data, there is no expected gaming revenue gain or loss based upon the most current data. However, there are increased revenue-sharing costs associated with the operation of additional Class III machines. Per their gaming compacts, tribes must pay four to six percent of Class III machine net win to the State.<sup>152</sup> Thus, the total increase in revenue sharing costs in Oklahoma can be estimated by multiplying the expected revenue per Class III machine by the revenue sharing rate(s) and then multiplying that product by the total number of Class II gaming machines that will be replaced with Class III machines.

## Results

Table 10 estimates the amount of increased revenue sharing per Class III machine in Oklahoma. Given revenue of approximately \$121 per Class III machine,<sup>153</sup> a four to six percent revenue-sharing rate equates to \$5 to \$7 per Class III machine. Multiplying these figures by the number of Class II machines currently in operation and which would be converted to Class III machines, which is 28,101 (see Table 2), yields aggregate revenue sharing costs of \$49.6 million to \$74.5 million for switching from Class II to Class III machines.

<b>Table 10. Increased Revenue-Sharing Cost in Oklahoma</b>		
	<b>Lower Bound</b>	<b>Upper Bound</b>
Estimated Revenue/Class III Machine/Day in 2006	\$121	\$121
Revenue-Sharing Rate	4%	6%
Revenue Sharing/Class III Machine/Day	\$5	\$7
Class II Machines to Be Converted to Class III Machines	28,101	28,101
Days per Year	365	365
<b>Increased Revenue-Sharing Cost (\$ Millions)</b>	<b>\$49.6</b>	<b>\$74.5</b>
Source: NIGC data; Tribal-State Compacts between Oklahoma tribes and the State of Oklahoma; State of Oklahoma, Office of State Finance; Analysis Group estimates.		

## LOST TRIBAL MEMBER JOBS

Depending on the magnitude of decreases in gaming and non-gaming revenues, tribes may find it necessary to scale back their gaming facilities and reduce the workforce, which typically includes tribal members.

<sup>152</sup> For Class III machines, revenue sharing payments are tiered from four percent to six percent of adjusted gross revenue. Source: Tribal-State Compacts between Oklahoma tribes and the State of Oklahoma.

<sup>153</sup> For further information on the \$121 per Class III machine revenue figure see the state-by-state analysis earlier in this chapter.

## Methodology

Previous research has shown that there is a strong correlation between casino revenue and the number of casino employees.<sup>154</sup> In fact, a commonly-used measure of labor productivity, output per worker, makes use of this relationship. In order to measure the number of casino jobs that are lost in association with the decreases in gaming and non-gaming revenue, I also use this relationship. Specifically, lost gaming facility jobs was calculated as the sum of lost gaming revenue and lost non-gaming revenue as calculated in sections above, divided by the average gaming revenue per worker figure for the casino industry,<sup>155</sup> which is \$83,172.<sup>156</sup>

In order to calculate the proportion of the total lost jobs that are lost by tribal members, I multiply the total number of lost jobs by the nationwide percentage of Indian gaming facility employees who are tribal members, which is 25 percent.<sup>157</sup> It should be noted that if tribes give preferential employment status to tribal members over non-tribal members, then the proportion of lost tribal jobs could be less than 25 percent.

## Results

Table 11 sets forth the calculation of lost tribal member jobs. Using the most likely scenario, Scenario 2, from the Lost Gaming Revenue and Lost Non-Gaming Revenue sections above, lost gaming revenue is \$142.7 million and lost non-gaming revenue is \$9.6 million. Therefore, total casino revenue is \$152.3 million. Dividing this sum by the revenue per worker of \$83,172 yields 1,831 lost gaming facility jobs. This equates to 458 lost tribal member jobs if 25 percent of all lost gaming facility jobs are those of tribal members.

Table 11. Lost Tribal Member Jobs	
Lost Class II Machine Revenue (\$ Millions)	\$142.7
Lost Non-Gaming Revenue (\$ Millions)	\$9.6
<b>Total Lost Casino Revenue (\$ Millions)</b>	<b>\$152.3</b>
Revenue Per Worker (\$)	\$83,172
<b>Lost Gaming Facility Jobs</b>	<b>1,831</b>
Percent of Gaming Facility Workers Who Are Tribal Members	25%
<b>Lost Tribal Member Jobs</b>	<b>458</b>
Source: NIGC data and Analysis Group estimates.	

<sup>154</sup> For example, see Analysis Group, *The Economic and Fiscal Benefits of Indian Gaming in California*, July 6, 1998.

<sup>155</sup> While revenue per worker only includes gaming revenue, lost revenue to which revenue per worker is applied includes both lost gaming revenue and lost non-gaming revenue. While the inclusion of non-gaming revenue in lost revenue ensures that lost non-gaming jobs are accounted for in the analysis, they are slightly underestimated because output per worker tends to be lower for non-gaming amenities than gaming.

<sup>156</sup> Data underlying the *Indian Gaming Industry Report*.

<sup>157</sup> In some areas of the country with high unemployment, the percentage of tribal employees is up to 80 percent at gaming facilities. Source: National Indian Gaming Association, website ([www.indiangaming.org/library/indian-gaming-facts/index.shtml](http://www.indiangaming.org/library/indian-gaming-facts/index.shtml)), accessed October 1, 2006.

## 6. Conclusions

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While, the NIGC's proposed changes to Class II gaming regulations would have a significant negative impact on Class II gaming and the tribes that operate Class II facilities, the magnitude of the impact would vary widely from state to state and tribe to tribe depending on the legal landscape, political environment, existing market conditions, and the availability of viable alternatives to Class II devices. And although the impact may be significant in some cases, it may be small or non-existent in others. However, given the confidentiality of the data upon which this report is based, when the economic impact is quantifiable, it was done on an aggregate basis.

There are a number of different types of negative economic impacts on Indian gaming facilities with Class II machines and tribes that operate them:

- A decrease in gaming revenue – \$142.7 million;
- A decrease in non-gaming revenue – \$9.6 million;
- A decrease in the variety and quality of Class II gaming machines;
- Temporary gaming facility closures or partial closures are possible as existing Class II machines are replaced or modified to become compliant with the proposed regulatory changes;
- Temporary gaming facility closures are possible if compliant Class II machines cannot be developed, certified, and delivered to gaming facilities within the timeframe allotted by the NIGC;
- A decrease in tribal government revenue as a result of a decrease in transfers of profits from gaming facilities to tribes – \$17.4 million;
- An increase in costs, including capital costs, regulatory costs, training costs, revenue-sharing costs, and financing costs – \$49.6 million to \$74.5 million in increased revenue-sharing costs in Oklahoma alone (this was the only reliably quantifiable cost at this time); and
- A decrease in the number of tribal member jobs – up to 458 jobs.

There are also other broader economic impacts on the Indian gaming industry, including:

- A decrease in leverage that tribes would have in the negotiation/renegotiation of Class III gaming compacts with states;
- Restriction of new entry into the Class II machine market; and
- A change in the degree of competition experienced by Class III gaming facilities as Class II machines become less desirable substitutes for Class III games in the eyes of consumers and as more Class III gaming is introduced.



While a number of the aforementioned economic impacts were not quantifiable at this time, they should be considered nonetheless alongside the quantified impacts.

## Appendix A: About the Author

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Dr. Meister is an economist specializing in the application of economics to complex business issues, commercial litigation, and regulatory matters. His areas of expertise include Indian gaming, economic impact analyses, market analyses, economic planning and policy, antitrust, regulation, statistics, and the calculation of economic damages in commercial litigation.

Dr. Meister has extensive experience analyzing economic issues related to Indian gaming. His work has included market analyses, economic impact studies, feasibility studies, surveys, analyses of gaming compacts and revenue sharing, and expert testimony in litigation matters. He has also conducted years of independent, academic research on Indian gaming and authored a number of publications on the subject. Most notable has been his annual Indian gaming study, the *Indian Gaming Industry Report*, which has received national recognition. His Indian gaming work is regularly cited by the press and relied upon by the gaming industry, governments, and the investment community. Dr. Meister's research and analyses have also been relied upon before the United States Supreme Court and a panel of the World Trade Organization. Furthermore, he has presented his work at various academic, professional, and industry conferences and testified before the California State Senate regarding Indian gaming issues.

Dr. Meister also has significant experience conducting economic impact studies. He combines his expertise with impact analysis, economics, planning, market analysis, statistics, and survey analysis to identify and measure the effects of changes in economic activity, including introductions, expansions, and closures of businesses and industries, the infusion of capital into an area, and the occurrence of events. His projects have involved: casinos; hotels; resorts; sporting and entertainment events; retail establishments; medical research; publicly-funded projects; and ballot initiatives.

Dr. Meister has broad experience providing litigation consulting services. He has provided assistance to attorneys on all phases of pretrial and trial practice, including assistance with discovery, development of economic, financial, and statistical models, expert testimony, and critique of analyses by opposing experts. Dr. Meister has conducted damages assessments in a wide variety of cases, including breach of contract, anticompetitive conduct, patent, trademark, and trade dress infringement, misappropriation of trade secrets, fraud, and business interruption.

## Appendix B: About Analysis Group, Inc.

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Analysis Group provides economic, financial, and business strategy consulting to corporations, law firms, and government entities. We advise corporate and government clients on a range of business issues that require expert interpretation of economic and financial data, including economic impact studies, market analyses, feasibility studies, competitive analyses, financial planning, employment and contractual matters, tax and transfer pricing issues, company and asset valuations, cost-effectiveness analyses, and evaluation of mergers and acquisitions. We help organizations create strategies for growth by analyzing market dynamics and organizational capabilities, enhancing innovation in current products and services, and identifying new market opportunities. We also assist law firms with all aspects of litigation, including pretrial discovery, development of economic and financial models, preparation of testimony, and critique of opposing experts.

Analysis Group, which was founded in 1981, has over 300 professional staff members, most with degrees in economics, finance, statistics, accounting, and business. We also work closely with an extensive network of experts at leading universities who help us develop state-of-the-art analyses and compelling insights for our clients. The academic rigor imposed by these relationships, coupled with our commitment to teamwork, ensures that our clients receive the highest caliber work product and service. Furthermore, Analysis Group is committed to the long-term satisfaction and success of our clients. We focus on developing long-term relationships based on mutual trust and dynamic collaboration.

Analysis Group's practice areas include accounting litigation services, antitrust, commercial litigation and damages, economic impact studies, energy, entertainment and media, environmental economics, financial institutions, health care economics, intellectual property, innovation management, labor & employment economics, real estate, securities & financial instruments, strategy & analytics, telecommunications, transfer pricing & tax, and valuation. Our consultants have worked for a broad array of clients, including Indian tribes, Fortune 100 companies and their subsidiaries, industry associations, and law firms.

Analysis Group has offices in Boston, Chicago, Dallas, Denver, Los Angeles, Menlo Park, Montreal, New York, San Francisco, and Washington, DC.

## Appendix C: Indian Gaming Facilities Currently Operating Class II Machines

Appendix C. Indian Gaming Facilities Currently Operating Class II Machines		
State	Tribe	Gaming Facility
Alabama	Poarch Band of Creek Indians	Creek Entertainment Center
Alabama	Poarch Band of Creek Indians	Riverside Entertainment Center
Alabama	Poarch Band of Creek Indians	Tallapoosa Entertainment Center
Alaska	Metlakatla Indian Community	Metlakatla Indian Community Bingo
Arizona	Ak-Chin Indian Community	Harrah's Phoenix Ak-Chin Casino Resort
Arizona	Tohono O'odham Nation	Golden Ha:sañ Casino
California	Lytton Rancheria Band of Pomo Indians	Casino San Pablo
California	Morongo Band of Mission Indians	Morongo Casino Resort & Spa
California	Morongo Band of Mission Indians	Morongo Travel Center
California	Pechanga Band of Luiseno Indians	Pechanga Resort & Casino
California	Rincon Indian Tribe	Harrah's Rincon Casino and Resort
California	San Manuel Band of Mission Indians	San Manuel Bingo & Casino
California	Sycuan Band of Kumeyaay Nation	Sycuan Casino & Resort
Florida	Miccosukee Tribal Indians of Florida	Miccosukee Resort & Gaming Center
Florida	Seminole Tribe of Florida	Seminole Casino - Brighton
Florida	Seminole Tribe of Florida	Seminole Casino - Hollywood
Florida	Seminole Tribe of Florida	Seminole Casino Immokalee
Florida	Seminole Tribe of Florida	Seminole Coconut Creek Casino
Florida	Seminole Tribe of Florida	Seminole Hard Rock Hotel & Casino Hollywood
Florida	Seminole Tribe of Florida	Seminole Hard Rock Hotel & Casino Tampa
Minnesota	White Earth Band Chippewa Indians	Berry's Bar
Minnesota	White Earth Band Chippewa Indians	Callaway Liquor Store
Minnesota	White Earth Band Chippewa Indians	Cedar Crest
Minnesota	White Earth Band Chippewa Indians	D & G Lounge
Minnesota	White Earth Band Chippewa Indians	Elbow Lake Store
Minnesota	White Earth Band Chippewa Indians	M & W Service Center
Minnesota	White Earth Band Chippewa Indians	Mahnomen American Legion Bingo
Minnesota	White Earth Band Chippewa Indians	Naytahwaush Village Store
Minnesota	White Earth Band Chippewa Indians	Ogema Fire House
Minnesota	White Earth Band Chippewa Indians	Pinehurst Resort
Minnesota	White Earth Band Chippewa Indians	Shooting Star Casino and Hotel
Minnesota	White Earth Band Chippewa Indians	Wild Rice Lounge
Montana	Assiniboine & Sioux Tribes	Silver Wolf Casino
Montana	Blackfeet Nation	Discovery Lodge Casino
Montana	Blackfeet Nation	Glacier Peaks Casino
Montana	Chippewa Cree Tribe	Bear Paw Casino and Four C's Cafe
Montana	Confederated Tribes of Salish & Kootenai	Best Western KwaTaqNuk Resort
Montana	Crow Indian Tribe	Little Bighorn Casino
Montana	Northern Cheyenne Indian Tribe	Charging Horse Casino & Bingo
Nebraska	Omaha Tribe of Nebraska	Lucky 77 Casino
Nebraska	Santee Sioux Nation	Native Star
Nebraska	Santee Sioux Nation	Ohiya Casino
Nebraska	Winnebago Tribe of Nebraska	Iron Horse Bar & Casino
New York	Seneca Nation of Indians	Seneca Gaming and Entertainment
New York	Seneca Nation of Indians	Seneca Nation Bingo - Allegany
New York	St. Regis Mohawk	Mohawk Bingo Palace
Oklahoma	Absentee Shawnee Tribe of Oklahoma	Thunderbird Wild Wild West Casino
Oklahoma	Cherokee Nation	Cherokee Casino - Fort Gibson
Oklahoma	Cherokee Nation	Cherokee Casino - Roland
Oklahoma	Cherokee Nation	Cherokee Casino - West Siloam Springs
Oklahoma	Cherokee Nation	Cherokee Casino Sallisaw
Oklahoma	Cherokee Nation	Cherokee Casino Resort
Oklahoma	Cherokee Nation	Cherokee Casino Tahlequah
Oklahoma	Cherokee Nation	Cherokee Nation Outpost Tobacco Shop
Oklahoma	Cherokee Nation	West Siloam Springs Smoke Shop
Oklahoma	Cheyenne and Arapaho Tribes of Oklahoma	Feather Warrior Casino
Oklahoma	Cheyenne and Arapaho Tribes of Oklahoma	Lucky Star Casino - Clinton
Oklahoma	Cheyenne and Arapaho Tribes of Oklahoma	Lucky Star Casino - Concho

<b>Appendix C. Indian Gaming Facilities Currently Operating Class II Machines</b>		
<b>State</b>	<b>Tribe</b>	<b>Gaming Facility</b>
Oklahoma	Chickasaw Nation	Ada Gaming Center
Oklahoma	Chickasaw Nation	Ada Travel Stop
Oklahoma	Chickasaw Nation	Black Gold Casino
Oklahoma	Chickasaw Nation	Chickasaw Travel Plaza-Goldsby
Oklahoma	Chickasaw Nation	Chisholm Trail Casino
Oklahoma	Chickasaw Nation	Davis Trading Post
Oklahoma	Chickasaw Nation	Gold Mountain Casino
Oklahoma	Chickasaw Nation	Goldsby Gaming Center
Oklahoma	Chickasaw Nation	Madill Gaming Center
Oklahoma	Chickasaw Nation	Newcastle Gaming Center
Oklahoma	Chickasaw Nation	Riverwind Casino
Oklahoma	Chickasaw Nation	Sulphur Gaming Center and Chickasaw Lodge
Oklahoma	Chickasaw Nation	Texoma Gaming Center
Oklahoma	Chickasaw Nation	Thackerville Travel Plaza
Oklahoma	Chickasaw Nation	Treasure Valley Gaming Center
Oklahoma	Chickasaw Nation	Washita Gaming Center
Oklahoma	Chickasaw Nation	WinStar Casino
Oklahoma	Choctaw Nation of Oklahoma	Cash Corral Casino
Oklahoma	Choctaw Nation of Oklahoma	Choctaw Bingo
Oklahoma	Choctaw Nation of Oklahoma	Choctaw Casino - Broken Bow
Oklahoma	Choctaw Nation of Oklahoma	Choctaw Casino - Grant
Oklahoma	Choctaw Nation of Oklahoma	Choctaw Casino - Idabel
Oklahoma	Choctaw Nation of Oklahoma	Choctaw Casino - McAlester
Oklahoma	Choctaw Nation of Oklahoma	Choctaw Casino - Pocola
Oklahoma	Choctaw Nation of Oklahoma	Choctaw Casino - Stringtown
Oklahoma	Choctaw Nation of Oklahoma	Choctaw Casino Too
Oklahoma	Choctaw Nation of Oklahoma	Choctaw Casino Resort - Durant
Oklahoma	Choctaw Nation of Oklahoma	Choctaw Inn - Durant
Oklahoma	Choctaw Nation of Oklahoma	Durant I Travel Plaza and Smoke Shop
Oklahoma	Choctaw Nation of Oklahoma	Durant II Travel Plaza and Smoke Shop
Oklahoma	Choctaw Nation of Oklahoma	Idabel Travel and Smoke Shop
Oklahoma	Choctaw Nation of Oklahoma	Pocola Travel and Smoke Shop
Oklahoma	Citizen Potawatomi Nation	Baby Grand Casino
Oklahoma	Citizen Potawatomi Nation	Fire Lake Casino
Oklahoma	Comanche Tribe of Oklahoma	Comanche Nation Casino
Oklahoma	Comanche Tribe of Oklahoma	Comanche Red River Casino
Oklahoma	Comanche Tribe of Oklahoma	Comanche Spur Smoke Shop and Casino
Oklahoma	Comanche Tribe of Oklahoma	Comanche Star Casino and Smoke Shop
Oklahoma	Delaware Tribe of Western Oklahoma	Gold River Bingo and Casino
Oklahoma	Eastern Shawnee Tribe	Border Town Bingo & Casino
Oklahoma	Eastern Shawnee Tribe	Eastern Shawnee Travel Plaza
Oklahoma	Fort Sill Apache Tribe of Oklahoma	Fort Sill Apache Casino
Oklahoma	Kaw Nation of Oklahoma	Kaw Southwind Casino
Oklahoma	Kickapoo Tribe of Oklahoma	Kickapoo Casino
Oklahoma	Kickapoo Tribe of Oklahoma	Kickapoo Conoco Station
Oklahoma	Miami Tribe of Oklahoma	Miami Tribe Entertainment
Oklahoma	Miami Tribe of Oklahoma	The Stables Casino
Oklahoma	Muscogee (Creek) Nation	Bristow Indian Bingo
Oklahoma	Muscogee (Creek) Nation	Checotah Indian Community Bingo
Oklahoma	Muscogee (Creek) Nation	Creek Nation Casino Okemah
Oklahoma	Muscogee (Creek) Nation	Creek Nation Casino Okmulgee
Oklahoma	Muscogee (Creek) Nation	Creek Nation Casino Tulsa
Oklahoma	Muscogee (Creek) Nation	Creek Nation Muscogee Bingo
Oklahoma	Muscogee (Creek) Nation	Creek Nation Travel Plaza
Oklahoma	Muscogee (Creek) Nation	Duck Creek Casino
Oklahoma	Muscogee (Creek) Nation	Eufaula Indian Community Casino
Oklahoma	Muscogee (Creek) Nation	Muscogee Travel Plaza
Oklahoma	Osage Nation	Million Dollar Elm Casino - Hominy

<b>Appendix C. Indian Gaming Facilities Currently Operating Class II Machines</b>		
<b>State</b>	<b>Tribe</b>	<b>Gaming Facility</b>
Oklahoma	Osage Nation	Million Dollar Elm Casino - Sand Springs
Oklahoma	Osage Nation	Osage Million Dollar Elm Casino
Oklahoma	Osage Nation	Osage Nation Pawhuska Casino
Oklahoma	Otoe-Missouria Tribe of Oklahoma	7 Clans Paradise Casino
Oklahoma	Ottawa Tribe of Oklahoma	High Winds Casino
Oklahoma	Peoria Tribe of Indians of Oklahoma	Buffalo Run Casino
Oklahoma	Peoria Tribe of Indians of Oklahoma	Joe's Outback Casino
Oklahoma	Peoria Tribe of Indians of Oklahoma	Peoria Gaming Center
Oklahoma	Ponca Tribe of Oklahoma	Blue Star Gaming and Casino
Oklahoma	Quapaw Tribe of Oklahoma	Quapaw Casino
Oklahoma	Sac and Fox Nation of Oklahoma	Sac and Fox Casino
Oklahoma	Sac and Fox Nation of Oklahoma	Sac and Fox Casino - Stroud
Oklahoma	Seminole Nation of Oklahoma	Mystic Winds Casino
Oklahoma	Seminole Nation of Oklahoma	Seminole Nation Trading Post
Oklahoma	Seneca Cayuga of Oklahoma	Grand Lake Casino
Oklahoma	Thlopthlocco Tribal Town	Golden Pony Casino
Oklahoma	Wyandotte Tribe of Oklahoma	Lucky Turtle Casino
South Dakota	Crow Creek Sioux Tribe	Lode Star Casino and Hotel
South Dakota	Flandreau Santee Sioux Tribe	Royal River Casino & Hotel
Texas	Kickapoo Traditional Tribe of Texas	Kickapoo Lucky Eagle Casino
Washington	Confederated Tribes and Bands of the Yakama Indian Nation	Yakama Nation Legends Casino
Washington	Confederated Tribes of the Chehalis Reservation	Lucky Eagle Casino
Washington	Confederated Tribes of the Colville Reservation	Coulee Dam Casino
Washington	Confederated Tribes of the Colville Reservation	Mill Bay Casino
Washington	Jamestown S'Klallam Tribe	7 Cedars Casino
Washington	Muckleshoot Indian Tribe	Muckleshoot Casino
Washington	Nooksack Indian Tribe	Nooksack River Casino
Washington	Puyallup Tribe of Indians	BJ's Bingo
Washington	Quinault Indian Nation	Quinault Beach Resort and Casino
Washington	Shoalwater Bay Indian Tribe	Shoalwater Bay Casino
Washington	Skokomish Tribe	The Lucky Dog Casino
Washington	Squaxin Island Tribe	Little Creek Casino Resort
Washington	Stillaguamish Tribe	Angel of the Winds Casino
Washington	Suquamish Tribe	Clearwater Casino
Washington	Swinomish Indian Tribal Community	Swinomish Northern Lights Casino
Washington	Tulalip Tribes of Washington	Tulalip Bingo
Washington	Upper Skagit Indian Tribe	Skagit Valley Casino Resort
Wisconsin	Ho-Chunk Nation	Dejope Bingo and Entertainment
Wyoming	Northern Arapaho Tribe	Wind River Casino
Wyoming	Northern Arapaho Tribe	Ethete Store

## Appendix D: Indian Gaming Facilities Operating Class II Machines in 2005

Appendix D. Indian Gaming Facilities Operating Class II Machines in 2005		
State	Tribe	Gaming Facility
Alaska	Metlakatla Indian Community	Metlakatla Indian Community Bingo
Alabama	Poarch Band of Creek Indians	Creek Entertainment Center
Alabama	Poarch Band of Creek Indians	Riverside Entertainment Center
Alabama	Poarch Band of Creek Indians	Tallapoosa Entertainment Center
Arizona	Ak-Chin Indian Community	Harrah's Phoenix Ak-Chin Casino Resort
Arizona	Fort McDowell Yavapai Nation	Fort McDowell Casino and Radisson Hotel
Arizona	Tohono O'odham Nation	Golden Ha:sañ Casino
California	Lytton Rancheria Band of Pomo Indians	Casino San Pablo
California	Pechanga Band of Luiseno Indians	Pechanga Resort & Casino
California	Sycuan Band of Kumeyaay Nation	Sycuan Casino & Resort
Florida	Miccosukee Tribal Indians of Florida	Miccosukee Resort & Gaming Center
Florida	Seminole Tribe of Florida	Seminole Casino - Brighton
Florida	Seminole Tribe of Florida	Seminole Casino - Hollywood
Florida	Seminole Tribe of Florida	Seminole Casino Immokalee
Florida	Seminole Tribe of Florida	Seminole Coconut Creek Casino
Florida	Seminole Tribe of Florida	Seminole Hard Rock Hotel & Casino Hollywood
Florida	Seminole Tribe of Florida	Seminole Hard Rock Hotel & Casino Tampa
Minnesota	White Earth Band Chippewa Indians	D & G Lounge
Minnesota	White Earth Band Chippewa Indians	Doc's Den
Minnesota	White Earth Band Chippewa Indians	Elbow Lake Store
Minnesota	White Earth Band Chippewa Indians	M & W Service Center
Minnesota	White Earth Band Chippewa Indians	Mahnomen American Legion Bingo
Minnesota	White Earth Band Chippewa Indians	Naytahwaush Village Store
Minnesota	White Earth Band Chippewa Indians	Ogema Fire House
Minnesota	White Earth Band Chippewa Indians	Pinehurst Resort
Montana	Blackfeet Nation	Discovery Lodge Casino
Montana	Blackfeet Nation	Glacier Peaks Casino
Nebraska	Omaha Tribe of Nebraska	Lucky 77 Casino
Nebraska	Santee Sioux Nation	Ohia Casino
Nebraska	Winnebago Tribe of Nebraska	Iron Horse Bar & Casino
New York	Seneca Nation of Indians	Seneca Gaming and Entertainment
New York	Seneca Nation of Indians	Seneca Nation Bingo - Allegany
New York	St. Regis Mohawk	Mohawk Bingo Palace
Oklahoma	Absentee Shawnee Tribe of Oklahoma	Thunderbird Wild Wild West Casino
Oklahoma	Cherokee Nation	Cherokee Casino Resort
Oklahoma	Cherokee Nation	Cherokee Casino - Roland
Oklahoma	Cherokee Nation	Cherokee Casino Tahlequah
Oklahoma	Cherokee Nation	Cherokee Casino - West Siloam Springs
Oklahoma	Cherokee Nation	Cherokee Nation Outpost Tobacco Shop
Oklahoma	Cherokee Nation	Cherokee Casino - Fort Gibson
Oklahoma	Cherokee Nation	West Siloam Springs Smoke Shop
Oklahoma	Cheyenne and Arapaho Tribes of Oklahoma	Feather Warrior Casino
Oklahoma	Cheyenne and Arapaho Tribes of Oklahoma	Lucky Star Casino - Clinton
Oklahoma	Cheyenne and Arapaho Tribes of Oklahoma	Lucky Star Casino - Concho
Oklahoma	Chickasaw Nation	Ada Gaming Center
Oklahoma	Chickasaw Nation	Ada Travel Stop
Oklahoma	Chickasaw Nation	Black Gold Casino
Oklahoma	Chickasaw Nation	Davis Trading Post
Oklahoma	Chickasaw Nation	Gold Mountain Casino (formerly Ardmore Gaming Center)
Oklahoma	Chickasaw Nation	Goldsby Gaming Center
Oklahoma	Chickasaw Nation	Chickasaw Travel Plaza-Goldsby
Oklahoma	Chickasaw Nation	Madill Gaming Center
Oklahoma	Chickasaw Nation	Chisholm Trail Casino
Oklahoma	Chickasaw Nation	Newcastle Gaming Center
Oklahoma	Chickasaw Nation	Sulphur Gaming Center and Chickasaw Lodge
Oklahoma	Chickasaw Nation	Texoma Gaming Center
Oklahoma	Chickasaw Nation	Thackerville Travel Plaza
Oklahoma	Chickasaw Nation	Treasure Valley Gaming Center
Oklahoma	Chickasaw Nation	Washita Gaming Center



Appendix D. Indian Gaming Facilities Operating Class II Machines in 2005		
State	Tribe	Gaming Facility
Oklahoma	Chickasaw Nation	WinStar Casino
Oklahoma	Choctaw Nation of Oklahoma	Cash Corral Casino
Oklahoma	Choctaw Nation of Oklahoma	Choctaw Casino - Broken Bow
Oklahoma	Choctaw Nation of Oklahoma	Choctaw Casino - Grant
Oklahoma	Choctaw Nation of Oklahoma	Choctaw Bingo
Oklahoma	Choctaw Nation of Oklahoma	Choctaw Casino - Idabel
Oklahoma	Choctaw Nation of Oklahoma	Choctaw Casino - McAlester
Oklahoma	Choctaw Nation of Oklahoma	Choctaw Casino - Pocola
Oklahoma	Choctaw Nation of Oklahoma	Choctaw Casino - Stringtown
Oklahoma	Choctaw Nation of Oklahoma	Choctaw Inn - Durant
Oklahoma	Choctaw Nation of Oklahoma	Durant I Travel Plaza and Smoke Shop
Oklahoma	Choctaw Nation of Oklahoma	Durant II Travel Plaza and Smoke Shop
Oklahoma	Choctaw Nation of Oklahoma	Idabel Travel and Smoke Shop
Oklahoma	Choctaw Nation of Oklahoma	Choctaw Casino Too
Oklahoma	Choctaw Nation of Oklahoma	Pocola Travel and Smoke Shop
Oklahoma	Citizen Potawatomi Nation	Baby Grand Casino
Oklahoma	Citizen Potawatomi Nation	Fire Lake Casino
Oklahoma	Comanche Tribe of Oklahoma	Comanche Nation Casino
Oklahoma	Comanche Tribe of Oklahoma	Comanche Red River Casino
Oklahoma	Comanche Tribe of Oklahoma	Comanche Spur Smoke Shop and Casino
Oklahoma	Comanche Tribe of Oklahoma	Comanche Star Casino and Smoke Shop
Oklahoma	Delaware Tribe of Western Oklahoma	Gold River Bingo and Casino
Oklahoma	Eastern Shawnee Tribe	Border Town Bingo & Casino
Oklahoma	Eastern Shawnee Tribe	Eastern Shawnee Travel Plaza
Oklahoma	Fort Sill Apache Tribe of Oklahoma	Fort Sill Apache Casino
Oklahoma	Iowa Tribe of Oklahoma	Cimarron Bingo Casino
Oklahoma	Kaw Nation of Oklahoma	Kaw Southwind Casino
Oklahoma	Kickapoo Tribe of Oklahoma	Kickapoo Casino
Oklahoma	Kickapoo Tribe of Oklahoma	Kickapoo Conoco Station
Oklahoma	Miami Tribe of Oklahoma	Miami Tribe Entertainment
Oklahoma	Miami Tribe of Oklahoma	The Stables Casino
Oklahoma	Muscogee (Creek) Nation	Bristow Indian Bingo
Oklahoma	Muscogee (Creek) Nation	Checotah Indian Community Bingo
Oklahoma	Muscogee (Creek) Nation	Creek Nation Casino Okmulgee
Oklahoma	Muscogee (Creek) Nation	Creek Nation Casino Tulsa
Oklahoma	Muscogee (Creek) Nation	Creek Nation Muscogee Bingo
Oklahoma	Muscogee (Creek) Nation	Creek Nation Travel Plaza
Oklahoma	Muscogee (Creek) Nation	Duck Creek Casino
Oklahoma	Muscogee (Creek) Nation	Eufaula Indian Community Casino
Oklahoma	Muscogee (Creek) Nation	Muscogee Travel Plaza
Oklahoma	Muscogee (Creek) Nation	Creek Nation Casino Okemah
Oklahoma	Osage Nation	Million Dollar Elm Casino - Hominy
Oklahoma	Osage Nation	Million Dollar Elm Casino - Sand Springs
Oklahoma	Osage Nation	Osage Million Dollar Elm Casino
Oklahoma	Osage Nation	Osage Nation Pawhuska Casino
Oklahoma	Otoe-Missouria Tribe of Oklahoma	7 Clans Paradise Casino
Oklahoma	Pawnee Nation of Oklahoma	Pawnee Trading Post
Oklahoma	Peoria Tribe of Indians of Oklahoma	Buffalo Run Casino
Oklahoma	Peoria Tribe of Indians of Oklahoma	Peoria Gaming Center
Oklahoma	Peoria Tribe of Indians of Oklahoma	Joe's Outback Casino
Oklahoma	Ponca Tribe of Oklahoma	Blue Star Gaming and Casino
Oklahoma	Quapaw Tribe of Oklahoma	Quapaw Casino
Oklahoma	Sac and Fox Nation of Oklahoma	Sac and Fox Casino
Oklahoma	Sac and Fox Nation of Oklahoma	Sac and Fox Casino - Stroud
Oklahoma	Seminole Nation of Oklahoma	Mystic Winds Casino
Oklahoma	Seminole Nation of Oklahoma	Seminole Nation Trading Post
Oklahoma	Seneca Cayuga of Oklahoma	Grand Lake Casino
Oklahoma	Thlopthlocco Tribal Town	Golden Pony Casino

Appendix D. Indian Gaming Facilities Operating Class II Machines in 2005		
State	Tribe	Gaming Facility
Oklahoma	Tonkawa Tribe of Oklahoma	Tonkawa Casino
Oklahoma	Wyandotte Tribe of Oklahoma	Lucky Turtle Casino
Oregon	Burns Paiute Tribe	Old Camp Casino
Oregon	Confederated Tribes of Grand Ronde	Spirit Mountain Casino - Willamina
South Dakota	Flandreau Santee Sioux Tribe	Royal River Casino & Hotel
Texas	Kickapoo Traditional Tribe of Texas	Kickapoo Lucky Eagle Casino
Washington	Confederated Tribes of the Chehalis Reservation	Lucky Eagle Casino
Washington	Confederated Tribes of the Colville Reservation	Coulee Dam Casino
Washington	Confederated Tribes of the Colville Reservation	Mill Bay Casino
Washington	Confederated Tribes and Bands of the Yakama Indian Nation	Yakama Nation Legends Casino
Washington	Nooksack Indian Tribe	Nooksack River Casino
Washington	Puyallup Tribe of Indians	BJ's Bingo
Washington	Quinault Indian Nation	Quinault Beach Resort and Casino
Washington	Shoalwater Bay Indian Tribe	Shoalwater Bay Casino
Wisconsin	Ho-Chunk Nation	Dejope Bingo and Entertainment
Wyoming	Northern Arapaho Tribe	Wind River Casino

## Appendix E: Class II Gaming Machine Market by State in 2005

<b>Appendix E. Class II Gaming Machine Market by State in 2005</b>			
<b>State</b>	<b>Tribes</b>	<b>Facilities</b>	<b>Class II Machines</b>
Alabama	1	3	1,523
Alaska	1	1	15
Arizona	3	3	76
California	3	3	2,182
Florida	2	7	8,598
Minnesota	1	8	69
Montana	1	2	98
Nebraska	3	3	350
New York	2	3	1,306
Oklahoma	27	86	28,601
Oregon	2	2	124
South Dakota	1	1	40
Texas	1	1	1,000
Washington	7	8	618
Wisconsin	1	1	361
Wyoming	1	1	428
Total	56	130	43,866
Source: NIGC.			